



PCB Cover File
(P. 111)
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Reply To
Attn of: SO-125

APR 10 1990

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Redmond, Chairman
Washington Water Power Company
P.O. Box 3727
Spokane, Washington 99220

Re: Toxic Substances Control Act
Docket No. 1090-03-24-2615

Dear Mr. Redmond:

Enclosed you will find a Complaint and Notice of Legal Proceedings; Notice of EPA Complaint; and Notice of Opportunity for Hearing and for Settlement Meeting. Copies of the regulations and Rules of Practice applicable to these proceedings are also enclosed. You are hereby advised to read this document carefully and communicate your answer within the time limit specified.

The Complaint alleges that your firm, Washington Water Power Company, violated the disposal provisions of the PCB Regulations issued pursuant to the Toxic Substances Control Act. You are allowed twenty (20) days to formally answer the Complaint unless you request and receive a written extension of time. However, we are available to informally discuss the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a formal answer unnecessary.

Juliane Matthews, Assistant Regional Counsel, is knowledgeable about this subject and can be reached at (206) 442-1169.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kenneth D. Feigner".

Kenneth D. Feigner, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: John A. Foley, EPA Headquarters

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

WASHINGTON WATER POWER COMPANY,

Respondent.

DOCKET NO. 1090-03-24-2615

NOTICE OF LEGAL PROCEEDINGS;
NOTICE OF EPA COMPLAINT; AND
NOTICE OF OPPORTUNITY FOR
HEARING AND FOR SETTLEMENT
MEETING

THE REGIONAL ADMINISTRATOR, EPA REGION 10, GIVES NOTICE TO THE FOLLOWING RESPONDENT:

Washington Water Power Company

P.O. Box 3727

Spokane, Washington 99220

YOU ARE HEREBY GIVEN NOTICE AS FOLLOWS:

1. Administrative proceedings have been commenced against you by the U.S. Environmental Protection Agency ("EPA").

2. You are hereby NOTIFIED of, and served with, the ATTACHED TRUE COPY of a COMPLAINT filed in these proceedings. It explains EPA's claims for civil penalties proposed to be adjudged against you.

3. The signed original of the attached COMPLAINT is filed with the EPA Regional Hearing Clerk, 1200 Sixth Avenue, SO-125, Seattle, Washington, 98101, Phone No. (206) 442-1078.

4. The ATTACHED COMPLAINT is a claim by EPA for civil penalties to be assessed against you. Adjudicative proceedings to that end are controlled by the "Consolidated Rules of Practice" appearing in Title 40, Code of Federal Regulations (C.F.R.), Part 22 (copy attached to the COMPLAINT).

5. You have a RIGHT TO A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE:

A. To contest any material allegation of the attached penalty COMPLAINT which you genuinely deny; and/or

B. To contest the amount and appropriateness of the civil penalties proposed in the COMPLAINT.

However, TO OBTAIN A HEARING YOU MUST FILE A WRITTEN RESPONSE to the COMPLAINT called an "Answer."

6. YOU HAVE ONLY TWENTY (20) CALENDAR DAYS (if you choose to respond) from the day you receive this Notice within which to file a WRITTEN RESPONSE to the attached COMPLAINT. Such a written response or "Answer" must be filed by having it DELIVERED ON TIME to the EPA Hearing Clerk (address in paragraph 3). Copies of all papers filed by you must be delivered at the same time (by mail or otherwise) to the EPA attorney whose name appears below in paragraph 10.

7. ANY SUCH WRITTEN RESPONSE YOU FILE TO THE COMPLAINT MUST:

A. Request a hearing on the COMPLAINT (or your right to request a hearing on the COMPLAINT is deemed waived); and

B. Contain clear and direct admissions, denials, and/or explanations with respect to each of the allegations of the COMPLAINT; and

C. Contain a definite statement of any facts which you contend constitute grounds for defense against the penalty liability stated in the COMPLAINT; and

D. Contain a concise statement of all material facts relating to allegations in the COMPLAINT which you intend to place in issue at a hearing.

8. IF YOU FILE A LATE WRITTEN RESPONSE, OR IF YOU DO NOT FILE ANY WRITTEN RESPONSE, YOU ARE SUBJECT TO THE ENTRY OF AN ORDER OF DEFAULT on the COMPLAINT. After an order of default, penalties can be adjudged and imposed on you without any further notice to you.

9. AN INFORMAL SETTLEMENT MEETING can be held at your request. You may discuss there:

A. Whether or not the violations alleged truly occurred; and/or


B. The amount and appropriateness of any civil penalty considering: the size of your business, the gravity of any such violations, the effect of civil penalties on your ability to continue in business, and any other appropriate factors.

Such a meeting might resolve matters by a settlement which would make a hearing unnecessary.

10. In order to arrange an informal settlement meeting you must contact Julianne Matthews, Assistant Regional Counsel, at (206) 442-1169, 1200 Sixth Avenue, SO-125, Seattle, Washington 98101, not later than twenty (20) calendar days from receipt hereof.

11. PLEASE TAKE NOTICE that an EXTENSION OF TIME to make and file your written response may be negotiated with the EPA attorney named above. If an agreement is reached to extend time, a written stipulation and an agreed order will be entered in accordance with 40 C.F.R. § 22.16(c).

ISSUED AT SEATTLE this 6th day of April, 1990.


KENNETH D. FEIGNER, Chief
Pesticides and Toxic Substances Branch

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7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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9 In the Matter of:

DOCKET NO. 1090-03-24-2615

10
11 WASHINGTON WATER POWER COMPANY,

COMPLAINT

12
13 Respondent.
14

15 I.

16 JURISDICTION

17
18 1. This is an administrative action instituted pursuant to
19 Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C.
20 § 2615(a), for the assessment of a civil penalty. The Complainant is
21 Region 10, United States Environmental Protection Agency (EPA). Complainant
22 has reason to believe that the above-named Respondent has violated federal
23 regulations addressing the use and/or disposal of polychlorinated biphenyls
24 (PCBs) (40 C.F.R. Part 761 promulgated under Section 6 of TSCA), and thereby
25 has violated Section 15 of TSCA, 15 U.S.C. § 2614.
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II.

FINDINGS AND VIOLATIONS

2. On October 11, 1989, an EPA inspection was performed at W.I. Forest Products in Spokane, Washington. The purpose of the inspection was to determine compliance with TSCA, 15 U.S.C. § 2601 et seq., and specifically the PCB regulations promulgated at 40 C.F.R. Part 761. The inspection disclosed the following violations concerning electrical equipment which was located at the site but which was owned and operated by Washington Water Power Company.

3. **REGULATIONS - DISPOSAL:** 40 C.F.R. § 761.60(d) states that spills, leaks, and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs. PCBs must be stored and disposed of in accordance with 40 C.F.R. § 761.60(a). Disposal of PCBs in any other manner constitutes the improper disposal of PCBs.

4. **REGULATION - DEFINITIONS:** 40 C.F.R. § 761.3 defines "PCB-Contaminated Electrical Equipment" as any electrical equipment, including transformers, that contain 50 ppm or greater PCB, but less than 500 ppm PCB. Oil-filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment.

1 5. Located in the substation which serves the sawmill, boiler
2 room, and chipper at W.I. Forest Products were six (6) oil-filled
3 transformers owned and operated by Washington Water Power. At the time of
4 the inspection, these transformers were untested and must be assumed to be
5 PCB-Contaminated Electrical Equipment containing 50-500 ppm PCB, in
6 accordance with 40 C.F.R. § 761.3. All six transformers, identified
7 specifically in Violations One through Six listed below, showed evidence of
8 leakage. Leaking dielectric fluid from transformers assumed to be
9 PCB-Contaminated Electrical Equipment constitutes improper disposal of PCBs
10 according to 40 C.F.R. § 761.60(d).

11
12 6. VIOLATION ONE: An oil-filled Westinghouse 333 KVA
13 transformer (serial number 6329354), later tested as containing 34 ppm PCB,
14 was leaking at the time of the inspection.

15
16 7. VIOLATION TWO: An oil-filled Westinghouse 333 KVA
17 transformer (serial number 6329355), later tested as containing 13 ppm PCB,
18 was leaking at the time of the inspection.

19
20 8. VIOLATION THREE: An oil-filled Westinghouse 333 KVA
21 transformer (serial number 6329353), later tested as containing 9.2 ppm PCB,
22 was leaking at the time of the inspection.

1 9. VIOLATION FOUR: An oil-filled Spokane 333 KVA transformer
2 (serial number S700623N), later tested as containing 27 ppm PCB, was leaking
3 at the time of the inspection.

4
5 10. VIOLATION FIVE: An oil-filled Spokane 333 KVA transformer
6 (serial number S700621N), later tested as containing 157 ppm PCB, was leaking
7 at the time of the inspection.

8
9 11. VIOLATION SIX: An oil-filled Spokane 333 KVA transformer
10 (serial number S700622N), later tested as containing 53 ppm PCB, was leaking
11 at the time of the inspection.

12
13 12. VIOLATIONS SEVEN AND EIGHT: Located in the planer area
14 were three (3) oil-filled, platform-mounted transformers. These transformers
15 were identified as being numbered C383363, C383365, and C383368, and were
16 later tested as containing, respectively, 237 ppm PCB, 253 ppm PCB, and 256
17 ppm PCB. The two transformers located at either end of the row were leaking
18 at the time of the inspection.

19
20 III.

21 PROPOSED CIVIL PENALTY

22
23 13. Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations
24 promulgated thereunder, 40 C.F.R. Part 761, authorize a civil penalty of up
25 to \$25,000.00 per day for each violation of TSCA. Based upon the violations

1 cited in this Complaint, the nature, circumstances, extent, and gravity of
2 the violations alleged, Respondent's ability to pay, effect on the
3 Respondent's ability to continue to do business, Respondent's history of
4 prior such violations, the degree of Respondent's culpability, and other such
5 matters as justice may require, the Complainant proposes that Respondent be
6 assessed the following penalty calculated in accordance with the Guidelines
7 for Assessment of Civil Penalties Under Section 16 of TSCA; PCB Penalty
8 Policy ("Penalty Policy"). A copy of the Penalty Policy accompanies this
9 Complaint.
10

11 14. The nature, circumstances, and gravity of Respondent's failure
12 to properly respond to leakage from assumed PCB-contaminated and
13 PCB-contaminated transformers, as cited in Violations One through Eight, are
14 represented by Level One on the matrix in the Penalty Policy. The extent of
15 these violations are represented by "minor" on the matrix. The penalties for
16 Violations One through Four have been reduced because, subsequent to the
17 inspection, the Respondent tested the transformers which are the subject of
18 those violations and documented that each contained less than 50 ppm PCB.
19 However, the total amount of all penalties has been further adjusted upward
20 because of prior violations of the same portions of the PCB Regulations.
21

22 15. The proposed penalty reflects a presumption of Respondent's
23 ability to pay the penalty and to continue in business. Respondent may
24 submit appropriate documentation to rebut that presumption during settlement
25 negotiations. Taking into account all the above factors, the penalty for
26
27

Respondent Washington Water Power Company, as prescribed by the matrix is \$33,000, calculated as set forth below. Based on the history of prior such violations by Respondent, on the degree of culpability of Respondent, and on other matters as justice may require, no further adjustment of the penalty is indicated at this time. If appropriate, further penalty adjustments may be made during settlement negotiations.

<u>Regulation</u>	<u>Requirement</u>	<u>Penalty Amount</u>
1. 40 C.F.R. § 761.60	Disposal	\$ 500.00
2. 40 C.F.R. § 761.60	Disposal	\$ 500.00
3. 40 C.F.R. § 761.60	Disposal	\$ 500.00
4. 40 C.F.R. § 761.60	Disposal	\$ 500.00
5. 40 C.F.R. § 761.60	Disposal	\$ 5,000.00
6. 40 C.F.R. § 761.60	Disposal	\$ 5,000.00
7. 40 C.F.R. § 761.60	Disposal	\$ 5,000.00
8. 40 C.F.R. § 761.60	Disposal	\$ <u>5,000.00</u>
	Subtotal	\$22,000.00
	(Penalty Assessment increased by 50% in accordance with TSCA Guidelines for Assessment of Penalties)	\$ <u>11,000.00</u>
	T o t a l	\$33,000.00

IV.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

16. The Consolidated Rules of Practice, 40 C.F.R. Part 22 (Consolidated Rules), govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint. Under those rules, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty.

17. To avoid being found in default, which constitutes an admission of all material facts alleged in the Complaint and a waiver of the right to a hearing, and which will effect the assessment of the aforecited civil penalty without further proceedings, Respondent must file with the Regional Hearing Clerk a written Answer within twenty (20) days after service of this Complaint. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular fact and so states, the allegation is deemed denied. Failure to deny any material factual allegation constitutes an admission of the allegation. The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and, (3) whether a hearing is requested. A hearing is deemed requested should Respondent contest any material fact upon which the

1 Complaint is based or raise any affirmative defense, or contend that the
2 amount of the penalty proposed in the Complaint is inappropriate, or claim
3 that Respondent is entitled to judgment as a matter of law. The Answer must
4 be sent to:

5 Regional Hearing Clerk, Region 10
6 Environmental Protection Agency
7 1200 Sixth Avenue, SO-125
8 Seattle, Washington 98101

9 18. A copy of the Answer and all other documents which Respondent
10 shall file in this action must be furnished to Juliane Matthews, Assistant
11 Regional Counsel, the attorney assigned to represent EPA in this matter, at:

12 Office of Regional Counsel (SO-125)
13 U.S. Environmental Protection Agency, Region 10
14 1200 Sixth Avenue
15 Seattle, Washington 98101

16 V.

17 INFORMAL SETTLEMENT CONFERENCE

18 19. Whether or not a hearing is requested, Respondent may contact
19 the above-named attorney to arrange for an informal settlement conference to
20 discuss the facts of this case, the amount of the proposed penalty, or the
21 possibility of settlement. An informal settlement conference does not,
22 however, affect Respondent's obligation to file a timely written Answer to
23 the Complaint.

1 20. EPA has the authority to modify the amount of the proposed
2 penalty, where appropriate, to reflect any settlement reached with
3 Respondent in an informal conference. The terms of such an agreement would
4 be embodied in a Consent Agreement and Final Order. A Consent Agreement and
5 Final Order entered into by and between EPA and Respondent would be binding
6 as to all terms and conditions specified therein upon signature by both
7 parties and by the EPA Administrative Law Judge, the Chief Judicial Officer,
8 or the EPA Regional Administrator.

9
10 21. Respondent is advised that, after the Complaint is issued,
11 the Consolidated Rules of Practice prohibit any ex parte (unilateral)
12 discussion of the merits of any action with the EPA Regional Administrator,
13 Chief Judicial Officer, Administrative Law Judge, or any person likely to
14 advise these officials in the decision of this case.

15
16 VI.

17 PAYMENT OF PENALTY

18
19 22. Instead of requesting an informal settlement conference or
20 filing an Answer requesting a hearing, Respondent may choose to pay the
21 proposed penalty. In order to do this, Respondent must first establish
22 contact with the EPA attorney named in paragraph 18 of this Complaint to
23 arrange for the preparation of a Consent Agreement and Final Order. After
24 the Consent Agreement and Final Order has been signed by both parties and by
25 the Regional Administrator, Respondent's payment must be made by sending a
26

1 cashier's check or certified check, payable to the Treasurer, United States
2 of America, in the amount of the penalty assessed in this Complaint to the
3 address identified below:

4
5 Environmental Protection Agency, Region 10
6 (Regional Hearing Clerk)
7 P.O. Box 360903M
8 Pittsburgh, Pennsylvania 15251

9 with a copy of such check (and the transmittal letter, if any) sent to:

10 Regional Hearing Clerk
11 Office of Regional Counsel
12 Environmental Protection Agency
13 1200 Sixth Avenue, SO-125
14 Seattle, Washington 98101

15 ISSUED AT SEATTLE this 6th day of April, 1990.


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17 
18 KENNETH D. FEIGNER, Chief
19 Pesticides and Toxic Substances Branch
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1
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3 CERTIFICATE OF SERVICE
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5 I hereby certify that the original of the foregoing Complaint and Notice
6 of Legal Proceedings; Notice of EPA Complaint; and Notice of Opportunity for
7 Hearing and for Settlement Meeting, Docket Number 1090-03-24-2615, have been
8 filed with the Region 10 Hearing Clerk, and that true and correct copies (with
9 accompanying copies of the Consolidated Rules of Practice and the Guidelines
10 for Assessment of Civil Penalties Under Section 16 of the Toxic Substances
11 Control Act; PCB Penalty Policy) were sent by Certified Mail, Return Receipt
12 Requested, to:
13
14
15
16
17

18 Mr. Paul Redmond, Chairman
19 Washington Water Power Company
20 P.O. Box 3727
21 Spokane, Washington 99220
22

23 April 10, 1990
24 DATE

25 
26 Romulo V. Corsilles
27 NAME

28 Acting Secretary, PTSB
TITLE



Bill
FILE COPY
(PCB Concept)

Reply To
Attn Of: SO-125

APR 10 1990

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Artechevarria, Plant Manager
W.I. Forest Products
Long Lake Division
P.O. Box 3344
Spokane, Washington 99220

Re: Toxic Substances Control Act
Docket No. 1090-03-23-2615

Dear Mr. Artechevarria:

Enclosed you will find a Complaint and Notice of Legal Proceedings; Notice of EPA Complaint; and Notice of Opportunity for Hearing and for Settlement Meeting. Copies of the regulations and Rules of Practice applicable to these proceedings are also enclosed. You are hereby advised to read these documents carefully and communicate your answer within the time limit specified.

The Complaint alleges that your company, W.I. Forest Products, violated the disposal, marking, and storage provisions of the PCB Regulations issued pursuant to the Toxic Substances Control Act. You are allowed twenty (20) days to formally answer the Complaint unless you request and receive a written extension of time. However, we are available to informally discuss the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a formal answer unnecessary.

Juliane Matthews, Assistant Regional Counsel, is knowledgeable about this subject and can be reached at (206) 442-1169.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kenneth D. Feigner".

Kenneth D. Feigner, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: Bill Danson, EPA Headquarters

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. 1090-03-23-2615
)	
W.I. FOREST PRODUCTS,	)	NOTICE OF LEGAL PROCEEDINGS;
	)	NOTICE OF EPA COMPLAINT; AND
	)	NOTICE OF OPPORTUNITY FOR
Respondent.	)	HEARING AND FOR SETTLEMENT
	)	MEETING

THE REGIONAL ADMINISTRATOR, EPA REGION 10, GIVES NOTICE TO THE FOLLOWING RESPONDENT:

W.I. Forest Products

P.O. Box 3344

Spokane, Washington 99220

YOU ARE HEREBY GIVEN NOTICE AS FOLLOWS:

1. Administrative proceedings have been commenced against you by the U.S. Environmental Protection Agency ("EPA").

2. You are hereby NOTIFIED of, and served with, the ATTACHED TRUE COPY of a COMPLAINT filed in these proceedings. It explains EPA's claims for civil penalties proposed to be adjudged against you.

3. The signed original of the attached COMPLAINT is filed with the EPA Regional Hearing Clerk, 1200 Sixth Avenue, SO-125, Seattle, Washington, 98101, Phone No. (206) 442-1078.

4. The ATTACHED COMPLAINT is a claim by EPA for civil penalties to be assessed against you. Adjudicative proceedings to that end are controlled by the "Consolidated Rules of Practice" appearing in Title 40, Code of Federal Regulations (C.F.R.), Part 22 (copy attached to the COMPLAINT).

5. You have a RIGHT TO A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE:

A. To contest any material allegation of the attached penalty COMPLAINT which you genuinely deny; and/or

B. To contest the amount and appropriateness of the civil penalties proposed in the COMPLAINT.

However, TO OBTAIN A HEARING YOU MUST FILE A WRITTEN RESPONSE to the COMPLAINT called an "Answer."

6. YOU HAVE ONLY TWENTY (20) CALENDAR DAYS (if you choose to respond) from the day you receive this Notice within which to file a WRITTEN RESPONSE to the attached COMPLAINT. Such a written response or "Answer" must be filed by having it DELIVERED ON TIME to the EPA Hearing Clerk (address in paragraph 3). Copies of all papers filed by you must be delivered at the same time (by mail or otherwise) to the EPA attorney whose name appears below in paragraph 10.

7. ANY SUCH WRITTEN RESPONSE YOU FILE TO THE COMPLAINT MUST:

A. Request a hearing on the COMPLAINT (or your right to request a hearing on the COMPLAINT is deemed waived); and

B. Contain clear and direct admissions, denials, and/or explanations with respect to each of the allegations of the COMPLAINT; and

C. Contain a definite statement of any facts which you contend constitute grounds for defense against the penalty liability stated in the COMPLAINT; and

D. Contain a concise statement of all material facts relating to allegations in the COMPLAINT which you intend to place in issue at a hearing.

8. IF YOU FILE A LATE WRITTEN RESPONSE, OR IF YOU DO NOT FILE ANY WRITTEN RESPONSE, YOU ARE SUBJECT TO THE ENTRY OF AN ORDER OF DEFAULT on the COMPLAINT. After an order of default, penalties can be adjudged and imposed on you without any further notice to you.

9. AN INFORMAL SETTLEMENT MEETING can be held at your request. You may discuss there:

A. Whether or not the violations alleged truly occurred; and/or

B. The amount and appropriateness of any civil penalty considering: the size of your business, the gravity of any such violations, the effect of civil penalties on your ability to continue in business, and any other appropriate factors.

Such a meeting might resolve matters by a settlement which would make a hearing unnecessary.

10. In order to arrange an informal settlement meeting you must contact Julianne Matthews, Assistant Regional Counsel, at (206) 442-1169, 1200 Sixth Avenue, SO-125, Seattle, Washington 98101, not later than twenty (20) calendar days from receipt hereof.

11. PLEASE TAKE NOTICE that an EXTENSION OF TIME to make and file your written response may be negotiated with the EPA attorney named above. If an agreement is reached to extend time, a written stipulation and an agreed order will be entered in accordance with 40 C.F.R. § 22.16(c).

ISSUED AT SEATTLE this 6th day of April, 1990.


KENNETH D. FEIGNER, (Chief)
Pesticides and Toxic Substances Branch

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7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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9 In the Matter of:

DOCKET NO. 1090-03-23-2615

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11 W.I. FOREST PRODUCTS,

COMPLAINT

12
13 Respondent.
14

15 I.

16 JURISDICTION

17
18 1. This is an administrative action instituted pursuant to
19 Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C.
20 § 2615(a), for the assessment of a civil penalty. The Complainant is
21 Region 10, United States Environmental Protection Agency (EPA). Complainant
22 has reason to believe that the above-named Respondent has violated federal
23 regulations addressing the use and/or disposal of polychlorinated biphenyls
24 (PCBs) (40 C.F.R. Part 761 promulgated under Section 6 of TSCA), and thereby
25 has violated Section 15 of TSCA, 15 U.S.C. § 2614.
26
27

II.

FINDINGS AND VIOLATIONS

2. On October 11, 1989, an EPA inspection was performed at W.I. Forest Products. The purpose of the inspection was to determine compliance with TSCA, 15 U.S.C. § 2601 et seq., and specifically the PCB regulations promulgated at 40 C.F.R. Part 761. The inspection disclosed the following violations:

3. REGULATION - DISPOSAL: 40 C.F.R. § 761.60(d) states that spills, leaks, and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs. PCBs must be stored and disposed of in accordance with 40 C.F.R. § 761.60(a). Disposal of PCBs in any other manner constitutes the improper disposal of PCBs.

4. REGULATION - DEFINITIONS: 40 C.F.R. § 761.3 defines "PCB-Contaminated Electrical Equipment" as any electrical equipment, including transformers, that contain 50 ppm or greater PCB, but less than 500 ppm PCB. Oil-filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment.

1 5. **VIOLATION ONE:** An untested, oil-filled, transformer
2 mounted on a pole at the corner of Mallon and Altamont was leaking at the
3 time of the inspection. In the absence of information on the PCB content,
4 the transformer is considered regulated and is assumed to be, at a minimum,
5 PCB-Contaminated Electrical Equipment. The leaking from the transformer
6 constituted the improper disposal of PCBs.

7
8 6. **REGULATION - STORAGE:** 40 C.F.R. § 761.65(b) requires
9 that any facility used for the storage of PCBs and PCB Items designated for
10 disposal meet the following criteria:

- 11 1) Adequate roof and walls to prevent rain water from reaching
12 the stored PCBs and PCB Items;
- 13 2) An adequate floor which has continuous curbing with a minimum
14 six inch high curb. The floor and curbing must provide a
15 containment volume equal to at least two times the internal
16 volume of the largest PCB Article or PCB Container stored
17 therein or 25 percent of the total internal volume of all PCB
18 Containers stored therein, whichever is greater;
- 19 3) No drain valves, floor drains, expansion joints, sewer lines,
20 or other openings that would permit liquids to flow from the
21 curbed area;
- 22 4) Floors and curbing constructed of continuous smooth and
23 impervious materials, such as Portland cement concrete or
24 steel, to prevent or minimize penetration of PCBs; and
25 5) Not located at a site that is below the 100-year flood water
26 elevation.

1 7. REGULATION - STORAGE: 40 C.F.R. § 761.65(c)(8)

2 requires that PCB Articles and Containers be dated on the article or
3 container when they are placed in storage.
4

5 8. REGULATION - MARKING: 40 C.F.R. § 761.40(a)(1)

6 requires that each PCB Container be marked in accordance with § 761.45(a)
7 after July 1, 1978.
8

9 9. At the time of the inspection, the inspector observed an
10 unused large Pyranol General Electric 15 KVR 460 volt Capacitor (serial
11 number M115251) installed next to a large fan in an unused warehouse south of
12 Mallon Avenue. This capacitor is defined in the PCB Regulations as a large,
13 low-voltage PCB Capacitor.
14

15 10. VIOLATION TWO: The PCB capacitor identified in

16 Paragraph 9 was not stored in an area that complied with the requirements for
17 a PCB storage for disposal area as set forth at § 761.65(b).
18

19 11. VIOLATION THREE: The PCB capacitor identified in

20 Paragraph 9 was not properly dated in accordance with § 761.65(c)(8).
21

22 12. VIOLATION FOUR: The PCB capacitor identified in

23 Paragraph 9 was not marked with a PCB label as required by § 761.40(a)(5).
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1 13. VIOLATION FIVE: The PCB capacitor identified in
2 Paragraph 9 was stored in an area that was not marked with a PCB label in
3 accordance with § 761.40(a)(10).
4

5 14. REQUIREMENT - ASSUMPTIONS: 44 Federal Register 31522
6 (May 31, 1979) states that any large capacitor that cannot be shown to be
7 PCB-free by examining label or nameplate information, must be assumed to be a
8 PCB Capacitor.
9

10 15. Also located in the unused warehouse south of Mallon Avenue
11 was an unused Cornell Dubilser Electric Corporation 120 KVR 460 volt
12 capacitor (serial number 1414366). This capacitor did not have nameplate or
13 label information showing it to be PCB-free. Therefore, it must be assumed
14 to be a PCB Capacitor.
15

16 16. VIOLATION SIX: The PCB capacitor identified in
17 Paragraph 15 was not stored in an area that complied with the requirements
18 for a PCB storage for disposal area as set forth at § 761.65(b).
19

20 17. VIOLATION SEVEN: The PCB capacitor identified in
21 Paragraph 15 was not properly dated in accordance with § 761.65(c)(8).
22

23 18. VIOLATION EIGHT: The PCB capacitor identified in
24 Paragraph 15 was not marked with a PCB label as required by § 761.40(a)(5).
25
26
27

1 19. VIOLATION NINE: The PCB capacitor identified in
2 Paragraph 15 was stored in an area that was not marked with a PCB label in
3 accordance with § 761.40(a)(10).
4

5 20. In the northwest storage shed on the west end of the
6 maintenance shop, the inspector noted a Pyranol General Electric 20n KVAR
7 capacitor bank (serial number M93979) stored sitting on the ground among
8 piles of discarded machine parts. The capacitors mounted on the capacitor
9 bank are considered to be large PCB Capacitors removed from service and
10 stored for disposal.
11

12 21. VIOLATION TEN: The PCB capacitors identified in
13 Paragraph 20 were not stored in an area that complied with the requirements
14 for a PCB storage for disposal area as set forth at § 761.65(b).
15

16 22. VIOLATION ELEVEN: The PCB capacitors identified in
17 Paragraph 20 were not properly dated in accordance with § 761.65(c)(8).
18

19 23. VIOLATION TWELVE: The PCB capacitors identified in
20 Paragraph 20 were not marked with a PCB label as required by § 761.40(a)(5).
21

22 24. VIOLATION THIRTEEN: The PCB capacitors identified in
23 Paragraph 20 were stored in an area that was not marked with a PCB label in
24 accordance with § 761.40(a)(10).
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25. The inspector also noted in the northwest storage shed an oil-filled General Electric 10 KVA transformer (serial number 2839715). The transformer had been removed from service and stored on a pallet for disposal.

26. VIOLATION FOURTEEN: The transformer identified in Paragraph 25, which must be assumed to be PCB-Contaminated Electrical Equipment, was not stored in an area that complied with the requirements for a PCB storage for disposal area as set forth at § 761.65(b).

27. **VIOLATION FIFTEEN:** The transformer identified in Paragraph 25, which must be assumed to be PCB-Contaminated Electrical Equipment, was not properly dated in accordance with § 761.65(c)(8).

28. **VIOLATION SIXTEEN:** The transformer identified in Paragraph 25, which must be assumed to be PCB-Contaminated Electrical Equipment, was leaking at the time of the inspection.

III.

PROPOSED CIVIL PENALTY

29. Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations promulgated thereunder, 40 C.F.R. Part 761, authorize a civil penalty of up to \$25,000.00 per day for each violation of TSCA. Based upon the violations cited in this Complaint, the nature, circumstances, extent, and gravity of the violations alleged, Respondent's ability to pay, effect on the

1 Respondent's ability to continue to do business, Respondent's lack of prior
2 such violations, the degree of Respondent's culpability, and other such
3 matters as justice may require, the Complainant proposes that Respondent be
4 assessed the following penalty calculated in accordance with the Guidelines
5 for Assessment of Civil Penalties Under Section 16 of TSCA; PCB Penalty
6 Policy ("Penalty Policy"). A copy of the Penalty Policy accompanies this
7 Complaint.
8

9 30. The nature, circumstances, and gravity of Respondent's failure
10 to respond to leaking assumed-PCB-contaminated transformers, as cited in
11 Violations One and Sixteen, are represented by Level One on the matrix in the
12 Penalty Policy. The nature, circumstances, and gravity of Respondent's
13 failure to properly store PCB items stored for disposal, as cited in
14 Violations Two, Six, Ten, and Fourteen, are represented by Level Three on the
15 matrix. The nature, circumstances, and gravity of Respondent's failure to
16 properly date PCB items stored for disposal, as cited in Violations Three,
17 Seven, Eleven, and Fifteen, are represented by Level Five on the matrix. The
18 nature, circumstances, and gravity of Respondent's failure to properly label
19 PCB items and PCB storage for disposal areas, as cited in Violations Four,
20 Five, Eight, Nine, Twelve, and Thirteen, are represented by Level Three on
21 the matrix. The extent of these violations is represented by "minor" on the
22 matrix.
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31. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business. Respondent may submit appropriate documentation to rebut that presumption during settlement negotiations. Taking into account all the above factors, the penalty for Respondent W.I. Forest Products, as prescribed by the matrix, is \$17,000, calculated as set forth below. Based on the lack of prior such violations by Respondent, on the degree of culpability of Respondent, and on other matters as justice may require, no further adjustment of the penalty is indicated at this time. If appropriate, further penalty adjustments may be made during settlement negotiations.

	<u>Regulation</u>	<u>Requirement</u>	<u>Penalty Amount</u>
1.	40 C.F.R. §§ 761.60 & 761.3	Disposal & Definitions	\$5,000
2.	40 C.F.R. § 761.65(b)	Storage for Disposal (SFD)	\$1,000*
3.	40 C.F.R. § 761.65(c)(8)	Storage (Dating)	\$*
4.	40 C.F.R. § 761.40(a)(5)	Marking (PCB item)	\$1,000*
5.	40 C.F.R. § 761.40(a)(10)	Marking (SFD area)	\$*
6.	40 C.F.R. § 761.65(b)	Storage (SFD area)	\$1,000*
7.	40.C.F.R. § 761.65(c)(8)	Storage (Dating)	\$*
8.	40 C.F.R. § 761.40(a)(5)	Marking (PCB item)	\$1,000*
9.	40 C.F.R. § 761.40(a)(10)	Marking (SFD area)	\$*
10.	40 C.F.R. § 761.65(b)	Storage (SFD area)	\$1,000*
11.	40 C.F.R. § 761.65(c)(8)	Storage (Dating)	\$*
12.	40 C.F.R. § 761.40(a)(5)	Marking (PCB item)	\$1,000*

1 admit, deny, or explain each of the factual allegations contained in this
2 Complaint with regard to which Respondent has any knowledge. Where
3 Respondent has no knowledge of a particular fact and so states, the
4 allegation is deemed denied. Failure to deny any material factual
5 allegation constitutes an admission of the allegation. The Answer shall
6 also state: (1) the circumstances or arguments which are alleged to
7 constitute the grounds of defense; (2) the facts which Respondent intends to
8 place at issue; and, (3) whether a hearing is requested. A hearing is
9 deemed requested should Respondent contest any material fact upon which the
10 Complaint is based or raise any affirmative defense, or contend that the
11 amount of the penalty proposed in the Complaint is inappropriate, or claim
12 that Respondent is entitled to judgment as a matter of law. The Answer must
13 be sent to:

14 Regional Hearing Clerk, Region 10
15 Environmental Protection Agency
16 1200 Sixth Avenue, SO-125
Seattle, Washington 98101

17 34. A copy of the Answer and all other documents which Respondent
18 shall file in this action must be furnished to Juliane Matthews, Assistant
19 Regional Counsel, the attorney assigned to represent EPA in this matter, at:

22 Office of Regional Counsel (SO-125)
23 U.S. Environmental Protection Agency, Region 10
24 1200 Sixth Avenue
25 Seattle, Washington 98101

V.

INFORMAL SETTLEMENT CONFERENCE

35. Whether or not a hearing is requested, Respondent may contact the above-named attorney to arrange for an informal settlement conference to discuss the facts of this case, the amount of the proposed penalty, or the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

36. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order entered into by and between EPA and Respondent would be binding as to all terms and conditions specified therein upon signature by both parties and by the EPA Administrative Law Judge, the Chief Judicial Officer, or the EPA Regional Administrator.

37. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

VI.

PAYMENT OF PENALTY

38. Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, Respondent may choose to pay the proposed penalty. In order to do this, Respondent must first establish contact with the EPA attorney named in Paragraph 33 of this Complaint to arrange for the preparation of a Consent Agreement and Final Order. After the Consent Agreement and Final Order has been signed by both parties and by the Regional Administrator, Respondent's payment must be made by sending a cashier's check or certified check, payable to the Treasurer, United States of America, in the amount of the penalty assessed in this Complaint to the address identified below:

Environmental Protection Agency, Region 10
(Regional Hearing Clerk)
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

with a copy of such check (and the transmittal letter, if any) sent to:

Regional Hearing Clerk
Office of Regional Counsel
Environmental Protection Agency
1200 Sixth Avenue, SO-125
Seattle, Washington 98101

ISSUED AT SEATTLE this 6th day of April, 1990.

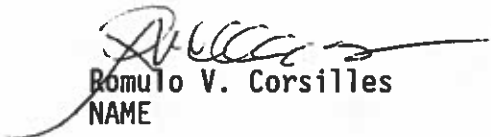

KENNETH D. FEIGNER, Chief
Pesticides and Toxic Substances Branch

1
2
3 CERTIFICATE OF SERVICE
4

5
6 I hereby certify that the original of the foregoing Complaint and Notice
7 of Legal Proceedings; Notice of EPA Complaint; and Notice of Opportunity for
8 Hearing and for Settlement Meeting, Docket Number 1090-03-23-2615, have been
9 filed with the Region 10 Hearing Clerk, and that true and correct copies (with
10 accompanying copies of the Consolidated Rules of Practice and the Guidelines
11 for Assessment of Civil Penalties Under Section 16 of the Toxic Substances
12 Control Act; PCB Penalty Policy) were sent by Certified Mail, Return Receipt
13 Requested, to:
14

15
16
17 Mr. John Artechevarria, Plant Manager
18 W.I. Forest Products
19 Long Lake Division
20 P.O. Box 3344
21 Spokane, Washington 99220
22

23 April 10, 1990
24 DATE


25 Romulo V. Corsilles
26 NAME

27 Acting Secretary, PTSB
28 TITLE



Bill H. (PCB Compl.)
FILE COPY

MAY 03 1990

Reply To
Attn Of: SO-125

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gale Olrich, Director
City of Spokane Advanced Wastewater Treatment Plant
4401 A.L. White Parkway
Spokane, Washington 99205

Dear Mr. Olrich:

Re: Toxic Substances Control Act
Docket No. 1090-04-28-2615


Dear Mr. Olrich:

Enclosed you will find a Complaint and Notice of Legal Proceedings; Notice of EPA Complaint; and Notice of Opportunity for Hearing and for Settlement Meeting. Copies of the regulations and Rules of Practice applicable to these proceedings are also enclosed. You are hereby advised to read this document carefully and communicate your answer within the time limit specified.

The Complaint alleges that the City of Spokane Advanced Wastewater Treatment Plant violated the recordkeeping provisions of the PCB Regulations issued pursuant to the Toxic Substances Control Act. You are allowed twenty (20) days to formally answer the Complaint unless you request and receive a written extension of time. However, we are available to informally discuss the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a formal answer unnecessary.

Bonnie L. Thie, Assistant Regional Counsel, is knowledgeable about this matter and can be reached at (206) 442-6705.

Sincerely,


for Kenneth D. Feigner, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: Bill Danson, EPA HQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. 1090-04-28-2615
)	
CITY OF SPOKANE ADVANCED	)	NOTICE OF LEGAL PROCEEDINGS;
WASTEWATER TREATMENT PLANT,	)	NOTICE OF EPA COMPLAINT; AND
	)	NOTICE OF OPPORTUNITY FOR
	)	HEARING AND FOR SETTLEMENT
Respondent.	)	MEETING
)	

THE REGIONAL ADMINISTRATOR, EPA REGION 10, GIVES NOTICE TO THE FOLLOWING RESPONDENT:

City of Spokane Advanced Waste Water Treatment Plant
4401 A. L. White Parkway
Spokane, Washington 99205

YOU ARE HEREBY GIVEN NOTICE AS FOLLOWS:

1. Administrative proceedings have been commenced against you by the U.S. Environmental Protection Agency ("EPA").
2. You are hereby NOTIFIED of, and served with, the ATTACHED TRUE COPY of a COMPLAINT filed in these proceedings. It explains EPA's claims for civil penalties proposed to be adjudged against you.
3. The signed original of the attached COMPLAINT is filed with the EPA Regional Hearing Clerk, 1200 Sixth Avenue, SO-125, Seattle, Washington, 98101, Phone No. (206) 442-1078.
4. The ATTACHED COMPLAINT is a claim by EPA for civil penalties to be assessed against you. Adjudicative proceedings to that end are controlled by the "Consolidated Rules of Practice" appearing in Title 40, Code of Federal Regulations (C.F.R.), Part 22 (copy attached to the COMPLAINT).
5. You have a RIGHT TO A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE:
 - A. To contest any material allegation of the attached penalty COMPLAINT which you genuinely deny; and/or
 - B. To contest the amount and appropriateness of the civil penalties proposed in the COMPLAINT.

However, TO OBTAIN A HEARING YOU MUST FILE A WRITTEN RESPONSE to the COMPLAINT called an "Answer."

6. YOU HAVE ONLY TWENTY (20) CALENDAR DAYS (if you choose to respond) from the day you receive this Notice within which to file a WRITTEN RESPONSE to the attached COMPLAINT. Such a written response or "Answer" must be filed by having it DELIVERED ON TIME to the EPA Hearing Clerk (address in paragraph 3). Copies of all papers filed by you must be delivered at the same time (by mail or otherwise) to the EPA attorney whose name appears below in paragraph 10.

7. ANY SUCH WRITTEN RESPONSE YOU FILE TO THE COMPLAINT MUST:

A. Request a hearing on the COMPLAINT (or your right to request a hearing on the COMPLAINT is deemed waived); and

B. Contain clear and direct admissions, denials, and/or explanations with respect to each of the allegations of the COMPLAINT; and

C. Contain a definite statement of any facts which you contend constitute grounds for defense against the penalty liability stated in the COMPLAINT; and

D. Contain a concise statement of all material facts relating to allegations in the COMPLAINT which you intend to place in issue at a hearing.

8. IF YOU FILE A LATE WRITTEN RESPONSE, OR IF YOU DO NOT FILE ANY WRITTEN RESPONSE, YOU ARE SUBJECT TO THE ENTRY OF AN ORDER OF DEFAULT on the COMPLAINT. After an order of default, penalties can be adjudged and imposed on you without any further notice to you.

9. AN INFORMAL SETTLEMENT MEETING can be held at your request. You may discuss there:

A. Whether or not the violations alleged truly occurred; and/or


B. The amount and appropriateness of any civil penalty considering: the size of your business, the gravity of any such violations, the effect of civil penalties on your ability to continue in business, and any other appropriate factors.

Such a meeting might resolve matters by a settlement which would make a hearing unnecessary.

10. In order to arrange an informal settlement meeting you must contact Bonnie L. Thie, Assistant Regional Counsel, at (206) 442-6705, 1200 Sixth Avenue, SO-125, Seattle, Washington 98101, not later than twenty (20) calendar days from receipt hereof.

11. PLEASE TAKE NOTICE that an EXTENSION OF TIME to make and file your written response may be negotiated with the EPA attorney named above. If an agreement is reached to extend time, a written stipulation and an agreed order will be entered in accordance with 40 C.F.R. § 22.16(c).

ISSUED AT SEATTLE this 2nd day of May, 1990.


for KENNETH D. FEIGNER, Chief
Pesticides and Toxic Substances Branch

In the Matter of:) DOCKET NO. 1094-04-28-2615
CITY OF SPOKANE ADVANCED)
WASTEWATER TREATMENT PLANT,) COMPLAINT
Respondent.)

JURISDICTION

COMPLAINT - Page 1 of 9
DOCKET NO. 1090-04-28-2615

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II.

FINDINGS AND VIOLATIONS

2. On November 6, 1989, an EPA inspection was performed at the City of Spokane Advanced Wastewater Treatment Plant. The purpose of the inspection was to determine compliance with TSCA, 15 U.S.C. § 2601 et seq., and specifically the PCB regulations promulgated at 40 C.F.R. Part 761. The inspection disclosed the following violations:

3. REGULATION - RECORDS & MONITORING: 40 C.F.R. § 761.180(a) states that, beginning July 2, 1978, each owner or operator of a facility using or storing at one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors, shall develop and maintain records on the disposition of the PCBs and PCB Items. The records shall form the basis of an annual document prepared for each facility by July 1, covering the previous calendar year. The following information for each facility shall be included in the annual document:

- 1) The dates when PCBs and PCB Items are removed from service, are placed into storage for disposal, and are placed into transport for disposal. The quantities of the PCBs and PCB Items shall be indicated using the following breakdown:

- 1 i) Total weight in kilograms of any PCBs and PCB Items in
2 PCB Containers including the identification of container
3 contents such as liquids and capacitors;
4 ii) Total number of PCB Transformers and total weight in
5 kilograms of any PCBs contained in the transformers; and
6 iii) Total number of PCB Large High or Low Voltage Capacitors.
7
8 2) For PCBs and PCB Items removed from service, the location of the
9 initial disposal or storage facility and the name of the owner or
10 operator of the facility.
11
12 3) Total quantities of PCBs and PCB Items remaining in service at the
13 end of the calendar year, using the following breakdown:
14
15 i) Total weight in kilograms of any PCBs and PCB Items in PCB
16 Containers, including the identification of container contents
17 such as liquids and capacitors,
18
19 ii) Total number of PCB Transformers and total weight in kilograms
20 of PCBs in the transformers, and
21
22 iii) Total number of PCB Large High or Low Voltage Capacitors.
23
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4. VIOLATIONS ONE THROUGH FOUR: There were no PCB Annual Documents for the year 1988, 1987, 1986, 1985, and 1984. During these years, there were at least four (4) PCB Transformers located at the City of Spokane Advanced Wastewater Treatment Plant. Lack of Annual Documents for each of the three most recent years constitutes a separate violation for each year; lack of Annual Documents for one or more years prior to the last three years constitutes one additional violation.

III.

PROPOSED CIVIL PENALTY

5. Section 16 of TSCA, 15 U.S.C. § 2615, and the regulations promulgated thereunder, 40 C.F.R. Part 761, authorize a civil penalty of up to \$25,000.00 per day for each violation of TSCA. Based upon the violations cited in this Complaint, the nature, circumstances, extent, and gravity of the violations alleged, Respondent's ability to pay, effect on the Respondent's ability to continue to do business, Respondent's lack of history of prior such violations, the degree of Respondent's culpability, and such other matters as justice may have required, the Complainant proposes that Respondent be assessed the following penalty calculated in accordance with the Polychlorinated Biphenyls (PCB) Penalty Policy ("Penalty Policy"). A copy of the Penalty Policy accompanies this Complaint.

6. The nature, circumstances, and gravity of Respondent's failure to maintain annual documents, as cited in Violations One through Four, are represented by Level Four on the matrix in the Penalty Policy. The extent of these violations is represented by "significant" on the matrix.

1 7. The proposed penalty reflects a presumption of Respondent's
2 ability to pay the penalty and to continue in business. Respondent may
3 submit appropriate documentation to rebut that presumption during settlement
4 negotiations. Taking into account all the above factors, the penalty for
5 Respondent, City of Spokane Advanced Wastewater Treatment Division, as
6 prescribed by the matrix, is \$24,000, as set forth below. Based on the fact
7 that Respondent has no history of prior such violations, on the degree of
8 culpability of Respondent, and on other matters as justice may have required,
9 no further adjustment of the penalty is indicated at this time. If
10 appropriate, further penalty adjustments may be made during settlement
11 negotiations.
12

<u>Regulation</u>	<u>Requirement</u>	<u>Penalty Amount</u>
14 40 C.F.R. § 761.180(a)	Recordkeeping (Annual Documents)	\$24,000

16
17 IV.

18 NOTICE OF OPPORTUNITY TO REQUEST A HEARING

19
20 8. The Consolidated Rules of Practice, 40 C.F.R. Part 22
21 (Consolidated Rules), govern these proceedings. A copy of the Consolidated
22 Rules of Practice accompanies this Complaint. Under those rules, Respondent
23 has the right to request a formal hearing to contest any material fact set
24 forth in this Complaint or to contest the appropriateness of the proposed
25 penalty.
26
27
28

1 9. To avoid being found in default, which constitutes an
2 admission of all material facts alleged in the Complaint and a waiver of the
3 right to a hearing, and which will effect the assessment of the above civil
4 penalty without further proceedings, Respondent must file with the Regional
5 Hearing Clerk a written Answer within twenty (20) days after service of this
6 Complaint. Respondent's Answer must clearly and directly admit, deny, or
7 explain each of the factual allegations contained in this Complaint with
8 regard to which Respondent has any knowledge. Where Respondent has no
9 knowledge of a particular fact and so states, the allegation is deemed
10 denied. Failure to deny any material factual allegation constitutes an
11 admission of the allegation. The Answer shall also state: (1) the
12 circumstances or arguments which are alleged to constitute the grounds of
13 defense; (2) the facts which Respondent intends to place at issue; and, (3)
14 whether a hearing is requested. A hearing is deemed requested should
15 Respondent contest any material fact upon which the Complaint is based or
16 raise any affirmative defense, or contend that the amount of the penalty
17 proposed in the Complaint is inappropriate, or claim that Respondent is
18 entitled to judgment as a matter of law. The Answer must be sent to:

19
20 Regional Hearing Clerk, Region 10
21 Environmental Protection Agency
22 1200 Sixth Avenue, S0-125
 Seattle, Washington 98101

23 10. A copy of the Answer and all other documents which Respondent
24 shall file in this action must be furnished to Bonnie L. Thie, Assistant
25 Regional Counsel, the attorney assigned to represent EPA in this matter, at:

Office of Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, SO-125
Seattle, Washington 98101

V.

INFORMAL SETTLEMENT CONFERENCE

11. Whether or not a hearing is requested, Respondent may contact the above-named attorney to arrange for an informal settlement conference to discuss the facts of this case, the amount of the proposed penalty, or the possibility of settlement. An informal settlement conference does not, however, affect Respondent's obligation to file a timely written Answer to the Complaint.

12. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order entered into by and between EPA and Respondent would be binding as to all terms and conditions specified therein upon signature by both parties and by the EPA Administrative Law Judge, the Chief Judicial Officer, or the EPA Regional Administrator.

13. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

VI.

PAYMENT OF PENALTY

14. Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, Respondent may choose to pay the proposed penalty. In order to do this, Respondent must first establish contact with the EPA attorney named in Paragraph 10 of this Complaint to arrange for the preparation of a Consent Agreement and Final Order. After the Consent Agreement and Final Order has been signed by both parties and by the Regional Administrator, Respondent's payment must be made by sending a cashier's check or certified check, payable to the Treasurer, United States of America, in the amount of the penalty assessed in this Complaint to the address identified below:

Environmental Protection Agency, Region 10
(Regional Hearing Clerk)
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

with a copy of such check (and the transmittal letter, if any) sent to:

Regional Hearing Clerk
Office of Regional Counsel
Environmental Protection Agency
1200 Sixth Avenue, SO-125
Seattle, Washington 98101

ISSUED AT SEATTLE this 2nd day of May, 1990.

J. D. Blasberger
for KENNETH D. FEIGNER, Chief
Pesticides and Toxic Substances Branch

CERTIFICATE OF SERVICE

To Whomsoever This May Concern:

I hereby certify that the originals of the foregoing Complaint and Notice of Legal Proceedings; Notice of EPA Complaint; and Notice of Opportunity for Hearing and for Settlement Meeting, Docket Number 1090-04-28-2615, have been filed with the Region 10 Hearing Clerk, and that true and correct copies (with accompanying copies of the Consolidated Rules of Practice and the Polychlorinated Biphenyls (PCB) Penalty Policy), were sent by Certified Mail, Return Receipt Requested, to:

Mr. Gale Olrich, Director
City of Spokane Advanced Wastewater Treatment Plant
4401 A. L. White Parkway
Spokane, Washington 99205

MAY 03 1990

DATE



Romulo V. Corsilles
Acting Secretary
Pesticides Toxic Substances Branch
EPA Region 10



Bill (PCB (inj.))
FILE COPY

Reply To
Attn Of: SO-125

AUG 15 1990

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas White, President
Deaconess Medical Center
P.O. Box 248
Spokane, Washington 99210-0248

Re: Toxic Substances Control Act
Docket No. 1090-04-14-2615

Dear Mr. White:

Enclosed is an administrative complaint for the assessment of civil penalties that has been filed against Deaconess Medical Center by the Environmental Protection Agency. A copy of the penalty policy and the Consolidated Rules of Practice that apply to this complaint are also enclosed. Please read these documents carefully and respond within the time limit specified in the complaint.


The complaint alleges that Deaconess Medical Center violated the use, marking, and recordkeeping provisions of the PCB (polychlorinated biphenyl) Regulations issued under the Toxic Substances Control Act (TSCA). As explained in the complaint, unless you request and receive a written extension of time, you have 20 days to do one of the following:

1. arrange a settlement conference;
2. file a written answer and request a hearing with an administrative law judge; or
3. pay the assessed penalty.

The specific procedures for each of the three options are explained in the complaint. Also, as explained in the complaint, if you fail to take one of the actions outlined above, a default order could be entered against you. After entry of an order of default, penalties can be assessed against you without further notice.

However, we are available to discuss with you the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a written answer unnecessary. Bonnie L. Thie, Assistant Regional Counsel, is the attorney handling this complaint for EPA. If you want to arrange for a settlement conference, request a time extension, or have other questions, you may call her at (206) 442-1037.

Sincerely,


for Kenneth D. Feigner, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: Bill Danson, EPA Headquarters

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7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
8

9 In the Matter of:

DOCKET NO. 1090-04-14-2615

10 DEACONESS MEDICAL CENTER,
11 Spokane, Washington,

COMPLAINT

12 Respondent.
13
14

15 I.

16 JURISDICTION

17
18 1. This is an administrative action instituted pursuant to
19 Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C.
20 § 2615(a), for the assessment of a civil penalty. The Complainant is
21 Region 10, United States Environmental Protection Agency (EPA). Complainant
22 has reason to believe that the above-named Respondent has violated federal
23 regulations addressing the use and/or disposal of polychlorinated biphenyls
24 (PCBs) (40 C.F.R. Part 761 promulgated under Section 6 of TSCA), and thereby
25 has violated Section 15 of TSCA, 15 U.S.C. § 2614.
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II.

FINDINGS AND VIOLATIONS

2. On March 5, 1990, an EPA inspection was performed at Deaconess Medical Center, West 800 Fifth Avenue, Spokane, Washington. The purpose of the inspection was to determine compliance with TSCA, 15 U.S.C. § 2601 et seq., and specifically the PCB regulations promulgated at 40 C.F.R. Part 761. The inspection disclosed the following violations:

VIOLATIONS ONE THROUGH THREE

3. REGULATION - QUARTERLY INSPECTIONS: 40 C.F.R. § 761.30(a)(1)(ix) requires that a visual inspection of each PCB Transformer (as defined in the definition of "PCB Transformer" under § 761.3) in use or stored for reuse shall be performed at least once every 3 months. These inspections may take place any time during the 3-month periods: January-March, April-June, July-September, and October-December as long as there is a minimum of 30 days between inspections. The visual inspection must include investigation for any leak of dielectric fluid on or around the transformer. The extent of the visual inspections will depend on the physical constraints of each transformer installation and should not require an electrical shutdown of the transformer being inspected.

40 C.F.R. § 761.30(a)(1)(xii) states that records of inspection and maintenance history shall be maintained at least 3 years after disposing

1 of a transformer and shall be made available for inspection, upon
2 request by EPA. Such records shall contain the following
3 information for each PCB Transformer:
4

- 5 (A) Its location.
- 6 (B) The date of each visual inspection and the date that a leak
7 was discovered, if different from the inspection date.
- 8 (C) The person performing the inspection.
- 9 (D) The location of any leak(s).
- 10 (E) An estimate of the amount of dielectric fluid released from
11 any leak.
- 12 (F) The date of any cleanup, containment, repair, or replacement.
- 13 (G) A description of any cleanup, containment, or repair performed.
- 14 (H) The results of any containment and daily inspection required
15 for uncorrected active leaks.
- 16

17 40 C.F.R. § 761.30(a)(1)(xiii) states that a reduced visual inspection
18 frequency of at least once every 12 months applies to PCB Transformers
19 that utilize either of the following risk reduction measures.
20

- 21 (A) A PCB Transformer which has impervious, undrained, secondary
22 containment capacity of at least 100 percent of the total
23 dielectric fluid volume of all transformer so contained, or
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1 (B) A PCB Transformer which has been tested and found to contain
2 less than 60,000 ppm PCBs (after 3 months of in service use if
3 the transformer has been serviced for purposes of reducing the
4 PCB concentration).

5
6 These inspections may take place any time during the calendar year as
7 long as there is a minimum of 180 days between inspections.

8
9 4. VIOLATIONS ONE THROUGH THREE: There is no record of annual
10 inspections having been conducted during the calendar year 1984 on the
11 following three PCB Transformers prior to their removal from service.

12
13 VIOLATION ONE: ITE, serial number 20982-A01, 2000
14 KVA, 315 gallons Askarel, formerly
15 located in the Chiller Building.

16
17 VIOLATION TWO: ITE, serial number 20982-D01, 500
18 KVA, 218 gallons Askarel, formerly
19 located in the North Wing Vault.

20
21 VIOLATION THREE: ITE, serial number 20982-B01, 140
22 gallons Askarel, formerly located on
23 the South Wing roof.

1 VIOLATIONS FOUR AND FIVE

2
3 5. VIOLATIONS FOUR AND FIVE: There is no record of annual
4 inspections having been conducted during the calendar year 1984 on the two
5 in-service PCB Transformers identified below.

6
7 VIOLATION FOUR: General Electric, serial number
8 G854825, 225 KVA, 100 gallons
9 Pyranol, located in the Sherwood
10 Transformer Vault.

11
12 VIOLATION FIVE: ITE, serial number 20136-A01,
13 300 KVA, 117 gallons Askarel,
14 located in the Sherwood
15 Transformer Vault.

16
17 VIOLATION SIX

18
19 6. REGULATION - MARKING: 40 C.F.R. § 761.40(j)(1) requires
20 that as of December 1, 1985, the vault door, machinery room door, fence,
21 hallway, or means of access, other than grates and manhole covers, to a PCB
22 Transformer must be marked with the required PCB label. In general, a 6 inch
23 by 6 inch PCB label is required, although the label may be reduced in size
24 proportionately to a minimum of 2 inches by 2 inches for equipment too small
25 to accommodate the standard 6 inch by 6 inch label.

1 7. VIOLATION SIX: The door to the Sherwood Transformer Vault
2 was not marked with the required PCB label.

3
4 VIOLATIONS SEVEN THROUGH ELEVEN

5
6 8. REGULATION - RECORDS & MONITORING: 40 C.F.R. § 761.180(a)
7 states that, beginning July 2, 1978, each owner or operator of a facility
8 using or storing at one time at least 45 kilograms (99.4 pounds) of PCBs
9 contained in PCB Container(s), or one or more PCB Transformers, or 50 or more
10 PCB Large High or Low Voltage Capacitors, shall develop and maintain records
11 on the disposition of the PCBs and PCB Items. The records shall form the
12 basis of an annual document prepared for each facility by July 1, covering
13 the previous calendar year. The following information for each facility
14 shall be included in the annual document:

- 15
16 1) The dates when PCBs and PCB Items are removed from service, are
17 placed into storage for disposal, and are placed into transport for
18 disposal. The quantities of the PCBs and PCB Items shall be
19 indicated using the following breakdown:

20
21 i) Total weight in kilograms of any PCBs and PCB Items in
22 PCB Containers including the identification of container
23 contents such as liquids and capacitors;

24 ii) Total number of PCB Transformers and total weight in
25 kilograms of any PCBs contained in the transformers; and
26
27

1 iii) Total number of PCB Large High or Low Voltage Capacitors.

2
3 2) For PCBs and PCB Items removed from service, the location of the
4 initial disposal or storage facility and the name of the owner or
5 operator of the facility.

6
7 3) Total quantities of PCBs and PCB Items remaining in service at the
8 end of the calendar year, using the following breakdown:

9
10 i) Total weight in kilograms of any PCBs and PCB Items in PCB
11 Containers, including the identification of container contents
12 such as liquids and capacitors,

13
14 ii) Total number of PCB Transformers and total weight in kilograms
15 of PCBs in the transformers, and

16
17 iii) Total number of PCB Large High or Low Voltage Capacitors.

18
19 9. VIOLATIONS SEVEN THROUGH ELEVEN: There was no record of PCB
20 Annual Documents having been prepared for the years 1984, 1985, 1986, 1987,
21 and 1988.

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states that as of December 1, 1985, all PCB Transformers (including PCB Transformers in storage for reuse) must be registered with fire response personnel with primary jurisdiction (that is, the fire department or fire brigade which would normally be called upon for the initial response to a fire involving the equipment), Information required to be provided to fire response personnel for each PCB Transformer includes:

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III.

PROPOSED CIVIL PENALTY

12. Section 16 of TSCA, 15 U.S.C. § 2615 authorize a civil penalty of up to \$25,000.00 per day for each violation of TSCA. Based upon the violations cited in this Complaint, the nature, circumstances, extent, and gravity of the violations alleged, Respondent's ability to pay, effect on the Respondent's ability to continue to do business, Respondent's lack of prior history of such violations, the degree of Respondent's culpability, and other such matters as justice may require, the Complainant proposes that Respondent be assessed the following penalty calculated in accordance with the Guidelines for Assessment of Civil Penalties Under Section 16 of TSCA; PCB Penalty Policy ("Penalty Policy"). A copy of the Penalty Policy accompanies this Complaint.

13. The nature, circumstances, and gravity of Respondent's failure to conduct quarterly inspections, as cited in Violations One through Five, are represented by Level Two on the matrix in the Penalty Policy. Violations Four and Five are combined because the PCB Transformers are located in the same room. The nature, circumstances, and gravity of Respondent's failure to mark the vault room door with the required PCB label, as cited in Violation Six, are represented by Level Five on the matrix. The nature, circumstances, and gravity of Respondent's failure to prepare Annual PCB Documents, as cited in Violations Seven through Eleven, are represented by Level Four on the matrix. The nature, circumstances, and gravity of Respondent's failure to

1 register the facility's PCB Transformers prior to December 1, 1985, as cited
2 in Violations Twelve through Sixteen, are represented by Level Four on the
3 matrix. The extent of Violation One, and Violations Seven through Sixteen
4 are represented by "significant" on the matrix. The extent of the remaining
5 violations is represented by "minor" on the matrix.

6
7 14. The proposed penalty reflects a presumption of Respondent's
8 ability to pay the penalty and to continue in business. Respondent may
9 submit appropriate documentation to rebut that presumption during settlement
10 negotiations. Taking into account all the above factors, the penalty for
11 Respondent Deaconess Medical Center, as prescribed by the matrix, is \$52,500,
12 calculated as set forth below. Based on the lack of history of prior such
13 violations by Respondent, on the degree of culpability of Respondent, and on
14 other matters as justice may require, no further adjustment of the penalty is
15 indicated at this time. If appropriate, further penalty adjustments may be
16 made during settlement negotiations.

	<u>Regulation</u>	<u>Requirement</u>	<u>Penalty Amount</u>
17			
18			
19	1-5. 40 C.F.R. § 761.30(a)(1)(ix)	Use (Quarterly Inspections)	\$22,000
20	6. 40 C.F.R. § 761.40(j)(1)	Marking	\$ 500
21	7-11. 40 C.F.R. § 761.180(a)	Recordkeeping	\$24,000
22	12-16. 40 C.F.R. § 761.30(a)(1)(vi)	Use (Fire Registration)	<u>\$ 6,000</u>
23		TOTAL	\$52,500
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IV.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. The Consolidated Rules of Practice, 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint. Under those rules, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty.

16. To avoid being found in default, which constitutes an admission of all material facts alleged in the Complaint and a waiver of the right to a hearing, and which will effect the assessment of the above civil penalty without further proceedings, Respondent must file with the Regional Hearing Clerk a written Answer within twenty (20) days after service of this Complaint. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular fact and so states, the allegation is deemed denied. Failure to deny any material factual allegation constitutes an admission of the allegation. The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and, (3) whether a hearing is requested. A hearing is deemed requested should Respondent contest any material fact upon which the Complaint is based or raise any affirmative defense, or contend that the amount of the penalty

1 proposed in the Complaint is inappropriate, or claim that Respondent is
2 entitled to judgment as a matter of law. The Answer must be sent to:

3 Regional Hearing Clerk, Region 10
4 Environmental Protection Agency
5 1200 Sixth Avenue, SO-125
6 Seattle, Washington 98101

7 17. A copy of the Answer and all other documents which Respondent
8 shall file in this action must be furnished to Bonnie L. Thie, Assistant
9 Regional Counsel, the attorney assigned to represent EPA in this matter, at:

10 Office of Regional Counsel
11 U.S. Environmental Protection Agency, Region 10
12 1200 Sixth Avenue, SO-125
13 Seattle, Washington 98101

14 V.

15 INFORMAL SETTLEMENT CONFERENCE

16 18. Whether or not a hearing is requested, Respondent may contact
17 the above-named attorney to arrange for an informal settlement conference to
18 discuss the facts of this case, the amount of the proposed penalty, or the
19 possibility of settlement. An informal settlement conference does not,
20 however, affect Respondent's obligation to file a timely written Answer to
21 the Complaint.

22 19. EPA has the authority to modify the amount of the proposed
23 penalty, where appropriate, to reflect any settlement reached with
24 Respondent in an informal conference. The terms of such an agreement would
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1 be embodied in a Consent Agreement and Final Order. A Consent Agreement and
2 Final Order entered into by and between EPA and Respondent would be binding
3 as to all terms and conditions specified therein upon signature by both
4 parties and by the EPA Administrative Law Judge, the Chief Judicial Officer,
5 or the EPA Regional Administrator.

6
7 20. Respondent is advised that, after the Complaint is issued,
8 the Consolidated Rules of Practice prohibit any ex parte (unilateral)
9 discussion of the merits of any action with the EPA Regional Administrator,
10 Chief Judicial Officer, Administrative Law Judge, or any person likely to
11 advise these officials in the decision of this case.

12
13 VI.

14 PAYMENT OF PENALTY


15
16 21. Instead of requesting an informal settlement conference or
17 filing an Answer requesting a hearing, Respondent may choose to pay the
18 proposed penalty. In order to do this, Respondent must first establish
19 contact with the EPA attorney named in paragraph 15 of this Complaint to
20 arrange for the preparation of a Consent Agreement and Final Order. After
21 the Consent Agreement and Final Order has been signed by both parties and by
22 the Regional Administrator, Respondent's payment must be made by sending a
23 cashier's check or certified check, payable to the Treasurer, United States
24 of America, in the amount of the penalty assessed in this Complaint to the
25 address identified below:
26
27

1
2 Environmental Protection Agency, Region 10
3 (Regional Hearing Clerk)
4 P.O. Box 360903M
5 Pittsburgh, Pennsylvania 15251

6 with a copy of such check (and the transmittal letter, if any) sent to:

7 Regional Hearing Clerk
8 Office of Regional Counsel
9 Environmental Protection Agency
10 1200 Sixth Avenue, SO-125
11 Seattle, Washington 98101

12 ISSUED AT SEATTLE this 14th day of August, 1990.

13 
14 For KENNETH D. FEIGNER, Chief
15 Pesticides and Toxic Substances Branch
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5 CERTIFICATE OF SERVICE
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9 I hereby certify that the original of the foregoing Complaint, Docket
10 Number 1090-04-14-2615, has been filed with the Region 10 Hearing Clerk, and
11 that a true and correct copy thereof (with accompanying copies of the
12 Consolidated Rules of Practice and the Polychlorinated Biphenyl (PCB) Penalty
13 Policy) was sent by Certified Mail, Return Receipt Requested, to:

14
15
16 Mr. Thomas White, President
17 Deaconess Medical Center
18 P.O. Box 248
19 Spokane, Washington 99210-0248
20
21

22 AUG 15 1990

23 DATE

24 
25 R. V. Corsilles

26 NAME

27 Acting Secretary

28 Pesticides & Toxic Substances Branch

EPA Region 10

TITLE

Complaint for



MAY 16 1990

Reply to the
Attention of M/S SO-125

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eleven Fourteen Inc.
Registered Agent for
Minerals Corporation of Idaho, Inc.
1114 Old National Bank Building
Spokane, Washington 99201

Re: Toxic Substances Control Act
Docket No. 1089-01-30-2615

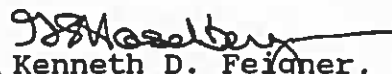
Dear Registered Agent:

Enclosed you will find an Amended Complaint and Notice of Legal Proceedings; Notice of EPA Amended Complaint; and Notice of Opportunity for Hearing and for Settlement Meeting. Copies of the regulations and Rules of Practice applicable to these proceedings are also enclosed. Minerals Corporation of Idaho, Inc. is hereby advised to read this document carefully and communicate its answer within the time limit specified.

The Amended Complaint alleges that Minerals Corporation of Idaho, Inc. violated the disposal, storage, marking, and recordkeeping provisions of the PCB Regulations issued pursuant to the Toxic Substances Control Act. Minerals Corporation of Idaho, Inc. is allowed twenty (20) days to formally answer the Amended Complaint unless it requests and receives a written extension of time. However, we are available to informally discuss the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a formal answer unnecessary.

Margaret B. Silver, Associate Regional Counsel, is knowledgeable about this subject and can be reached at (206) 442-1476.

Sincerely,


for Kenneth D. Feigner, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: Bill Danson, EPA Headquarters
Leslie Weatherhead



MAY 16 1977

Reply to the
Attention of M/S SO-125

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jack W. Kendrick
Registered Agent for
Bunker Hill Mining Co. (U.S.) Inc.
834 McKinley Avenue
Kellogg, Idaho 83837

Re: Toxic Substances Control Act
Docket No. 1089-01-30-2615

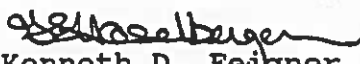
Dear Mr. Kendrick:

Enclosed you will find an Amended Complaint and Notice of Legal Proceedings; Notice of EPA Amended Complaint; and Notice of Opportunity for Hearing and for Settlement Meeting. Copies of the regulations and Rules of Practice applicable to these proceedings are also enclosed. Bunker Hill Mining Co. (U.S.) Inc. is hereby advised to read this document carefully and communicate its answer within the time limit specified.

The Amended Complaint alleges that Bunker Hill Mining Co. (U.S.) Inc. violated the disposal, marking, storage, and recordkeeping provisions of the PCB Regulations issued pursuant to the Toxic Substances Control Act. Bunker Hill Mining Co. (U.S.) Inc. is allowed twenty (20) days to formally answer the Complaint unless it requests and receives a written extension of time. However, we are available to informally discuss the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a formal answer unnecessary.

Margaret B. Silver, Associate Regional Counsel, is knowledgeable about this subject and can be reached at (206) 442-1476.

Sincerely,


for Kenneth D. Feigner, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: Bill Danson, EPA Headquarters
Leslie Weatherhead

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2
3 In the Matter of:

)
) DOCKET NO. 1089-01-30-2615

4 BUNKER HILL MINING CO. (U.S.)
5 INC. and MINERALS CORPORATION
6 OF IDAHO, INC.,

)
) NOTICE OF LEGAL PROCEEDINGS;
) NOTICE OF EPA AMENDED
) COMPLAINT; AND NOTICE OF
) OPPORTUNITY FOR HEARING
) AND FOR SETTLEMENT
) MEETING

7 Respondents.
8

9 THE REGIONAL ADMINISTRATOR, EPA REGION 10, GIVES NOTICE TO THE
10 FOLLOWING RESPONDENTS:

11 1. BUNKER HILL MINING CO. (U.S.) INC.
12 c/o Jack Kendrick, Registered Agent
834 McKinley Avenue
Kellogg, Idaho 83837

13 2. MINERALS CORPORATION OF IDAHO, INC.
14 c/o Eleven Fourteen Inc.,
Registered Agent
1114 Old National Bank Building
15 Spokane, Washington 99201

16 YOU ARE HEREBY GIVEN NOTICE AS FOLLOWS:

17 1. Administrative proceedings have been commenced against
18 you by the U.S. Environmental Protection Agency ("EPA").

19 2. You are hereby NOTIFIED of, and served with, the ATTACHED
TRUE COPY of an AMENDED COMPLAINT filed in these proceedings. It
20 explains EPA's claims for civil penalties proposed to be adjudged
against you.

21 3. The signed original of the attached AMENDED COMPLAINT is
filed with the EPA Regional Hearing Clerk, 1200 Sixth Avenue,
22 SO-125, Seattle, Washington, 98101, Phone No. (206) 442-1078.

23 4. The attached AMENDED COMPLAINT is a claim by EPA for
civil penalties to be assessed against you. Adjudicative
24 proceedings to that end are controlled by the "Consolidated Rules
of Practice" appearing in Title 40, Code of Federal Regulations
25 (C.F.R.), Part 22 (copy attached to the AMENDED COMPLAINT).

26 5. You have a RIGHT TO A HEARING BEFORE AN ADMINISTRATIVE
LAW JUDGE:

27 NOTICE OF LEGAL PROCEEDINGS - PAGE 1 OF 3
28

1 A. To contest any material allegation of the attached
2 penalty AMENDED COMPLAINT which you genuinely deny; and/or

3 B. To contest the amount and appropriateness of the
4 civil penalties proposed in the AMENDED COMPLAINT.

5 However, TO OBTAIN A HEARING YOU MUST FILE A WRITTEN RESPONSE
6 to the AMENDED COMPLAINT called an "Answer."

7 6. YOU HAVE ONLY TWENTY (20) CALENDAR DAYS (if you choose to
8 respond) from the day you receive this Notice within which to
9 file a WRITTEN RESPONSE to the attached AMENDED COMPLAINT. Such
a written response or "Answer" must be filed by having it
DELIVERED ON TIME to the EPA Hearing Clerk (address in paragraph
3). Copies of all papers filed by you must be delivered at the
same time (by mail or otherwise) to the EPA attorney whose name
appears below in paragraph 10.

10 7. ANY SUCH WRITTEN RESPONSE YOU FILE TO THE AMENDED
11 COMPLAINT MUST:

12 A. Request a hearing on the AMENDED COMPLAINT (or your
13 right to request a hearing on the AMENDED COMPLAINT is deemed
waived); and

14 B. Contain clear and direct admissions, denials, and/or
15 explanations with respect to each of the allegations of the
AMENDED COMPLAINT; and

16 C. Contain a definite statement of any facts which you
17 contend constitute grounds for defense against the penalty
liability stated in the AMENDED COMPLAINT; and

18 D. Contain a concise statement of all material facts
19 relating to allegations in the AMENDED COMPLAINT which you intend
to place in issue at a hearing.

20 8. IF YOU FILE A LATE WRITTEN RESPONSE, OR IF YOU DO NOT
21 FILE ANY WRITTEN RESPONSE, YOU ARE SUBJECT TO THE ENTRY OF AN
22 ORDER OF DEFAULT on the AMENDED COMPLAINT. After an order of
default, penalties can be adjudged and imposed on you without any
further notice to you.

23 9. AN INFORMAL SETTLEMENT MEETING can be held at your
24 request. You may discuss there:

25 A. Whether or not the violations alleged truly occurred;
26 and/or

1 B. The amount and appropriateness of any civil penalty
2 considering: the size of your business, the gravity of any such
3 violations, the effect of civil penalties on your ability to
4 continue in business, and any other appropriate factors.

5 Such a meeting might resolve matters by a settlement which
6 would make a hearing unnecessary.

7 10. In order to arrange an informal settlement meeting you
8 must contact Margaret B. Silver, Associate Regional Counsel, at
9 (206) 442-1476, 1200 Sixth Avenue, SO-125, Seattle, Washington
10 98101, not later than twenty (20) calendar days from receipt
11 hereof.

12 11. PLEASE TAKE NOTICE that an EXTENSION OF TIME to make and
13 file your written response may be negotiated with the EPA
14 attorney named above. If an agreement is reached to extend time,
15 a written stipulation and an agreed order will be entered in
16 accordance with 40 C.F.R. § 22.16(c).

17 ISSUED AT SEATTLE this 16th day of May,
18 1990.

19 *Kenneth D. Feigner*
20 *for* KENNETH D. FEIGNER, Chief
21 Pesticides and Toxic Substances Branch
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8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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10 In the Matter of:

11 BUNKER HILL MINING CO. (U.S.)
12 INC. and MINERALS CORPORATION
13 OF IDAHO, INC.,

14 Respondents.

DOCKET NO. 1089-01-30-2615

AMENDED COMPLAINT

15 I.
16

17 JURISDICTION
18

19 1. This is an administrative action instituted pursuant
20 to Section 16(a) of the Toxic Substances Control Act (TSCA),
21 15 U.S.C. § 2615(a), for the assessment of a civil penalty. The
22 Complainant is Region 10, United States Environmental Protection
23 Agency (EPA). Complainant has reason to believe that the
24 above-named Respondents have violated federal regulations
25 addressing the use and/or disposal of polychlorinated biphenyls
26

1 (PCBs) (40 C.F.R. Part 761 promulgated under Section 6 of TSCA),
2 and thereby have violated Section 15 of TSCA, 15 U.S.C. § 2614.
3
4

5 II.

6 7 FINDINGS AND VIOLATIONS

8
9 2. On September 29, 1988, an EPA inspection was
10 performed at facilities of Minerals Corporation of Idaho, Inc.,
11 and Bunker Hill Mining Co. (U.S.) Inc., in Kellogg, Idaho. The
12 purpose of the inspection was to determine compliance with TSCA,
13 15 U.S.C. § 2601 et seq., and specifically the PCB regulations
14 promulgated at 40 C.F.R. Part 761. Violations were documented as
15 a result of the inspection; these violations and applicable
16 regulations and requirements are set forth below.
17

18 VIOLATIONS ONE THROUGH EIGHT

19
20 3. REGULATION - DISPOSAL: 40 C.F.R. § 761.60(d)
21 states that spills and other uncontrolled discharges of PCBs at
22 concentrations of 50 ppm or greater constitute the disposal of
23 PCBs. PCBs resulting from the cleanup and removal of spills,
24 leaks, or other uncontrolled discharges must be stored and
25 disposed of in accordance with 40 C.F.R. § 761.60(a). Disposal
26
27

1 of PCBs in any other manner constitutes the improper disposal of
2 PCBs.

3
4 4. VIOLATION ONE: A PCB Transformer, Bunker Hill
5 Number 13, had a leak of PCBs on the transformer which had not
6 been cleaned up and which had solidified. The failure to clean
7 up this leak constitutes the improper disposal of PCBs.

8
9 5. VIOLATION TWO: A PCB Transformer, Bunker Hill
10 Number 14, had a leak of PCBs on the transformer which had not
11 been cleaned up and which had solidified. The failure to clean
12 up this leak constitutes the improper disposal of PCBs.

13
14 6. VIOLATION THREE: A PCB Transformer, Bunker Hill
15 Number 15, had a leak of PCBs on the transformer which had not
16 been cleaned up and which had solidified. The failure to clean
17 up this leak constitutes the improper disposal of PCBs.

18
19 7. VIOLATION FOUR: A PCB Transformer, Bunker Hill
20 Number 16, had a leak of PCBs on the transformer which had not
21 been cleaned up and which had solidified. The failure to clean
22 up this leak constitutes the improper disposal of PCBs.

23
24 8. VIOLATION FIVE: A PCB Transformer, Bunker Hill
25 Number 65, had a leak of PCBs on the transformer which had not

1 been cleaned up and which had solidified. The failure to clean
2 up this leak constitutes the improper disposal of PCBs.

3
4 9. VIOLATION SIX: A PCB Transformer, Bunker Hill
5 Number 66, had a leak of PCBs on the transformer which had not
6 been cleaned up and which had solidified. The failure to clean
7 up this leak constitutes the improper disposal of PCBs.

8
9 10. VIOLATION SEVEN: A PCB Transformer, Bunker Hill
10 Number 67, had a leak of PCBs on the transformer which had not
11 been cleaned up and which had solidified. The failure to clean
12 up this leak constitutes the improper disposal of PCBs.

13
14 11. VIOLATION EIGHT: A PCB Transformer, Bunker Hill
15 Number 68, had a leak of PCBs on the transformer which had not
16 been cleaned up and which had solidified. The failure to clean
17 up this leak constitutes the improper disposal of PCBs.

18
19 VIOLATIONS NINE THROUGH TWELVE

20
21 12. REGULATION - STORAGE: 40 C.F.R. § 761.65(b)
22 requires that any facility used for the storage of PCBs and PCB
23 Items designated for disposal meet the following criteria:

- 1) Adequate roof and walls to prevent rain water from reaching the stored PCBs and PCB Items;
- 2) An adequate floor which has continuous curbing with a minimum six-inch-high curb. The floor and curbing must provide a containment volume equal to at least two times the internal volume of the largest PCB Article or PCB Container stored therein or 25 percent of the total internal volume of all PCB Containers stored therein, whichever is greater;
- 3) No drain valves, floor drains, expansion joints, sewer lines, or other openings that would permit liquids to flow from the curbed area;
- 4) Floors and curbing constructed of continuous smooth and impervious materials, such as Portland cement concrete or steel, to prevent or minimize penetration of PCBs; and
- 5) A site that is not located below the 100-year flood water elevation.

13. VIOLATION NINE: The area where twelve PCB Containers in the storage building were stored for disposal did not meet the requirements of PCB storage for disposal areas in that there was no secondary containment.

14. VIOLATION TEN: The area in old Cottrell, where a PCB Transformer, Bunker Hill Number 3, 300 KVA, 245 gallons, serial number 8630091, was stored for disposal, did not meet the requirements for PCB storage for disposal areas in that there was no secondary containment.

15. VIOLATION ELEVEN: The area where four PCB Transformers, Bunker Hill Numbers 65, 66, 67, and 68, were stored for disposal, did not meet the requirements for PCB storage for disposal areas in that there were no walls and roof to prevent rainwater from reaching the stored items, the floor was not impervious to PCBs, and there was no secondary containment.

16. VIOLATION TWELVE: The area where a PCB Transformer, Bunker Hill Number 281, General Electric, serial number 7336824, Pyranol, was stored for disposal, did not meet the requirements for PCB storage for disposal areas in that there were no walls or roof to prevent rainwater from reaching the stored items, the floor was not impervious to PCBs, and there was no secondary containment.

VIOLATION THIRTEEN

17. REGULATION - MARKING: 40 C.F.R. § 761.40
requires that all PCB Containers, PCB Transformers, Large PCB

1 Capacitors, and PCB storage for disposal areas be marked in
2 accordance with 40 C.F.R. § 761.45. A 6-inch by 6-inch PCB label
3 is required, except that the label may be reduced in size
4 proportionately to a minimum of 2 inches by 2 inches for
5 equipment too small to accommodate the standard 6-inch by 6-inch
6 label.

7
8 18. VIOLATION THIRTEEN: A PCB Transformer, Bunker
9 Hill Number 24, was not marked with the required PCB label.

10
11 VIOLATION FOURTEEN

12
13 19. REGULATION - RECORDS & MONITORING: 40 C.F.R.
14 § 761.180(a) states that, beginning July 2, 1978, each owner or
15 operator of a facility using or storing at one time at least 45
16 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or
17 one or more PCB Transformers, or 50 or more PCB Large High or Low
18 Voltage Capacitors, shall develop and maintain records on the
19 disposition of the PCBs and PCB Items. The records shall form
20 the basis of an annual document prepared for each facility by
21 July 1, covering the previous calendar year. The following
22 information for each facility shall be included in the annual
23 document:

1) The dates when PCBs and PCB Items are removed from service, are placed into storage for disposal, and are placed into transport for disposal. The quantities of the PCBs and PCB Items shall be indicated using the following breakdown:

- i) Total weight in kilograms of any PCBs and PCB Items in PCB Containers including the identification of container contents such as liquids and capacitors;
- ii) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers; and
- iii) Total number of PCB Large High or Low Voltage Capacitors.

2) For PCBs and PCB Items removed from service, the location of the initial disposal or storage facility and the name of the owner or operator of the facility.

3) Total quantities of PCBs and PCB Items remaining in service at the end of the calendar year, using the following breakdown:

1 of as required by 40 C.F.R. § 761.60 within one year from the
2 date when it was first placed into storage.

3
4 22. VIOLATION FIFTEEN: The 1986 PCB Annual Report
5 indicates that 2 PCB Capacitors were placed into storage for
6 disposal during the year. The report also indicates that 14 PCB
7 Containers were placed into storage for disposal. Neither the
8 1986 nor the 1987 PCB Annual Report indicates that these PCB
9 Capacitors and PCB Containers were disposed of. Failure to
10 dispose of the 2 PCB Capacitors and the 14 PCB Containers, as
11 required, within one year from the date placed into storage for
12 disposal constitutes a violation of the PCB Regulations.

13
14 VIOLATION SIXTEEN

15
16 23. REGULATION - REGISTRATION: 40 C.F.R.
17 § 761.30(a)(1)(vi) states that as of December 1, 1985, all PCB
18 Transformers (including PCB Transformers in storage for reuse)
19 must be registered with fire response personnel with primary
20 jurisdiction (that is, the fire department or fire brigade which
21 would normally be called upon for the initial response to a fire
22 involving the equipment). Information required to be provided to
23 fire response personnel for each PCB Transformer includes:

1 (A) The location of the PCB Transformer (the address of
2 the building and the physical location of the PCB
3 Transformer on the building site and, for an outdoor
4 PCB Transformer, the location of the outdoor
5 substation).

6
7 (B) The principal constituent of the dielectric fluid in
8 the transformer (e.g., PCBs, mineral oil, or silicone
9 oil).

10
11 (C) The name and telephone number of the person to
12 contact in the event of a fire involving the
13 equipment.

14
15 24. VIOLATION SIXTEEN: The PCB Transformers at the
16 facility were not registered with the fire response agency by
17 December 1, 1985, as required.

18
19
20 III.

21
22 PROPOSED CIVIL PENALTY

23
24 25. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes a
25 civil penalty of up to \$25,000.00 per day for each violation of
26

1 TSCA. Based upon the violations cited in this Amended Complaint,
2 the nature, circumstances, extent, and gravity of the violations
3 alleged, Respondents' ability to pay, effect on the Respondents'
4 ability to continue to do business, the degree of Respondents'
5 culpability, and other such matters as justice requires, the
6 Complainant proposes that Respondents be assessed the following
7 penalty calculated in accordance with the Polychlorinated
8 Biphenyls (PCB) Penalty Policy. A copy of the Penalty Policy
9 accompanies this Amended Complaint.

10
11 26. The nature, circumstances, and gravity of
12 Respondents' improper disposal of PCBs, as cited in Violations
13 One through Eight, are represented by Level One on the matrix in
14 the PCB Penalty Policy. The nature, circumstances, and gravity
15 of Respondents' failure to properly store PCBs for disposal, as
16 cited in Violations Nine through Twelve, are represented by Level
17 Three on the matrix. The nature, circumstances, and gravity of
18 Respondents' failure to properly mark, as cited in Violation
19 Thirteen, are represented by Level Three on the matrix. The
20 nature, circumstances, and gravity of Respondents' failure to
21 maintain accurate records, as cited in Violation Fourteen, are
22 represented by Level Four on the matrix. The nature,
23 circumstances, and gravity of Respondents' failure to dispose of
24 PCB Items within one year from the date they were placed into
25 storage for disposal, as cited in Violation Fifteen, are
26

1 represented by Level Three on the matrix. The nature,
2 circumstances, and gravity of Respondents' failure to register
3 PCB Transformers with the fire department by December 1, 1985, as
4 cited in Violation Sixteen, are represented by Level Two on the
5 matrix. The extent of Violations One through Nine, Eleven,
6 Twelve, Fourteen, and Fifteen is represented by "minor" on the
7 matrix. The extent of Violations Ten and Thirteen is represented
8 by "significant" on the matrix. The extent of Violation Sixteen
9 is represented by "major" on the matrix; however, the proposed
10 penalty for this violation has been adjusted downward because
11 Respondents did eventually register with fire response personnel
12 as required but registered after the date they should have done
13 so.

14
15 27. The proposed penalty reflects a presumption of
16 Respondents' ability to pay the penalty and to continue in
17 business. Respondents may submit appropriate documentation to
18 rebut that presumption during settlement negotiations. Taking
19 into account all the above factors, the penalty for Respondents
20 Minerals Corporation of Idaho, Inc., and Bunker Hill Mining Co.
21 (U.S.) Inc., as prescribed by the matrix, is \$68,000, calculated
22 as set forth below. Based on the degree of culpability of
23 Respondents, and on other matters as justice requires, no further
24 adjustment of the penalty is indicated at this time. If
25
26
27
28

appropriate, further penalty adjustments may be made during settlement negotiations.

<u>REGULATION</u>	<u>REQUIREMENT</u>	<u>PENALTY AMOUNT</u>
1. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
2. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
3. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
4. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
5. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
6. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
7. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
8. 40 C.F.R. § 761.60(d)	Disposal	\$ 5,000
9. 40 C.F.R. § 761.65(b)	Storage for Disposal	\$ 1,500
10. 40 C.F.R. § 761.65(b)	Storage for Disposal	\$10,000
11. 40 C.F.R. § 761.65(b)	Storage for Disposal	\$ 1,500
12. 40 C.F.R. § 761.65(b)	Storage for Disposal	\$ 1,500
13. 40 C.F.R. § 761.40	Marking	\$10,000
14. 40 C.F.R. § 761.180(a)	Recordkeeping	\$ 1,000
15. 40 C.F.R. § 761.65(a)	Storage (dispose of within one year)	\$ 1,500
16. 40 C.F.R. § 761.30(a)	Registration	<u>\$ 1,000</u>
	TOTAL	\$68,000

IV.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

28. The Consolidated Rules of Practice, 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Amended Complaint. Under those rules, Respondents have the right to request a formal hearing to

1 contest any material fact set forth in this Amended Complaint or
2 to contest the appropriateness of the proposed penalty.

3
4 29. To avoid being found in default, which constitutes an
5 admission of all material facts alleged in the Amended Complaint
6 and a waiver of the right to a hearing, and which will effect the
7 assessment of the above civil penalty without further
8 proceedings, Respondents must file with the Regional Hearing
9 Clerk a written Answer within twenty (20) days after service of
10 this Amended Complaint. Respondents' Answer must clearly and
11 directly admit, deny, or explain each of the factual allegations
12 contained in this Amended Complaint with regard to which
13 Respondents have any knowledge. Where Respondents have no
14 knowledge of a particular fact and so state, the allegation is
15 deemed denied. Failure to deny any material factual allegation
16 constitutes an admission of the allegation. The Answer shall
17 also state: (1) the circumstances or arguments which are alleged
18 to constitute the grounds of defense; (2) the facts which
19 Respondents intend to place at issue; and, (3) whether a hearing
20 is requested. A hearing is deemed requested should Respondents
21 contest any material fact upon which the Amended Complaint is
22 based or raise any affirmative defense, or contend that the
23 amount of the penalty proposed in the Amended Complaint is
24 inappropriate, or claim that Respondents are entitled to judgment
25 as a matter of law. The Answer must be sent to:

1 Regional Hearing Clerk, Region 10
2 Environmental Protection Agency
3 1200 Sixth Avenue, SO-125
4 Seattle, Washington 98101

5 30. A copy of the Answer and all other documents which
6 Respondents shall file in this action must be furnished to
7 Margaret B. Silver, Associate Regional Counsel, the attorney
8 assigned to represent EPA in this matter, at:

9 Office of Regional Counsel, Region 10
10 Environmental Protection Agency
11 1200 Sixth Avenue, SO-125
12 Seattle, Washington 98101

13 V.

14 **INFORMAL SETTLEMENT CONFERENCE**

15
16 31. Whether or not a hearing is requested, Respondents
17 may contact the above-named attorney to arrange for an informal
18 settlement conference to discuss the facts of this case, the
19 amount of the proposed penalty, or the possibility of settlement.
20 An informal settlement conference does not, however, affect
21 Respondents' obligation to file a timely written Answer to the
22 Amended Complaint.

23
24 32. EPA has the authority to modify the amount of the
25 proposed penalty, where appropriate, to reflect any settlement
26

1 reached with Respondents in an informal conference. The terms of
2 such an agreement would be embodied in a Consent Agreement and
3 Final Order. A Consent Agreement and Final Order entered into by
4 and between EPA and Respondents would be binding as to all terms
5 and conditions specified therein upon signature by both parties
6 and by the EPA Administrative Law Judge, the Chief Judicial
7 Officer, or the EPA Regional Administrator.

8
9 33. Respondents are advised that, after the Amended
10 Complaint is issued, the Consolidated Rules of Practice prohibit
11 any ex parte (unilateral) discussion of the merits of any action
12 with the EPA Regional Administrator, Chief Judicial Officer,
13 Administrative Law Judge, or any person likely to advise these
14 officials in the decision of this case.

15 16 17 VI.

18 19 PAYMENT OF PENALTY

20
21 34. Instead of requesting an informal settlement
22 conference or filing an Answer requesting a hearing, Respondents
23 may choose to pay the proposed penalty. In order to do this,
24 Respondents must first establish contact with the EPA attorney
25 named in paragraph 30 of this Amended Complaint to arrange for
26


1 the preparation of a Consent Agreement and Final Order. After
2 the Consent Agreement and Final Order has been signed by both
3 parties and by the Regional Administrator, Respondents' payment
4 must be made by sending a cashier's check or certified check,
5 payable to the Treasurer, United States of America, in the amount
6 of the penalty assessed in this Amended Complaint to the address
7 identified below:

8
9 Environmental Protection Agency, Region 10
10 (Regional Hearing Clerk)
11 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251

12 with a copy of such check (and the transmittal letter, if any)
sent to:

13 Regional Hearing Clerk
14 Office of Regional Counsel
15 Environmental Protection Agency
1200 Sixth Avenue, SO-125
Seattle, Washington 98101

16 ISSUED AT SEATTLE this 16th day of May, 1990.
17
18

19 
20 for KENNETH D. FEIGNER, Chief
Pesticides and Toxic Substances Branch
21
22
23
24
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28

1
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3
4 CERTIFICATE OF SERVICE
5
6

7 I hereby certify that the originals of the foregoing Amended
8 Complaint and Notice of Legal Proceedings; Notice of EPA Amended
9 Complaint; and Notice of Opportunity for Hearing and for
10 Settlement Meeting, Docket Number 1089-01-30-2615, have been
11 filed with the Region 10 Hearing Clerk, and that true and correct
12 copies (with accompanying copies of the Consolidated Rules of
13 Practice and the Polychlorinated Biphenyls (PCB) Penalty Policy)
14 were sent by Certified Mail, Return Receipt Requested, to:

15 Eleven Fourteen Inc.
16 Registered Agent for
Minerals Corporation of Idaho,
Inc.
17 1114 Old National Bank Building
Spokane, Washington 99201

Jack W. Kendrick
Registered Agent for
Bunker Hill Mining Co. (U.S.) Inc.
834 McKinley Avenue
Kellogg, Idaho 83837

18
19 5/16/90
20 DATE

21 J. P. Roselberg
22 NAME
23 Chief, Toxic Substances Section
24 TITLE
25
26
27
28

Bill
FILE COPY



Reply to the
Attention of M/S SO-155

DEC 14 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Gregory S. Morrison
Registered Agent for
Inland Aqua-Tech Precious Metals,
Inc.,
W 621 Mallon
Spokane, Washington 99201**

**Richard A. Handley
Registered Agent for
Inland Aqua-Tech Company, Inc., and
Inland Aqua-Tech Equipment Systems,
Inc.
E 12121 Portland Avenue
P.O. Box 14784
Spokane, Washington 99206**

**Re: Inland Aqua-Tech Precious Metals, Inc.
Inland Aqua-Tech Company, Inc.
Inland Aqua-Tech Equipment Systems, Inc.
Toxic Substances Control Act
Docket No. 1092-09-17-2615**

Dear Mssrs. Morrison and Handley:

Enclosed is an administrative complaint for the assessment of civil penalties that has been filed against Inland Aqua-Tech Precious Metals, Inc., Inland Aqua-Tech Company, Inc., and Inland Aqua-Tech Equipment Systems, Inc. (hereafter referred to jointly as "Inland Aqua-Tech") by the Environmental Protection Agency. A copy of the penalty policy and the Consolidated Rules of Practice that apply to this complaint are also enclosed.

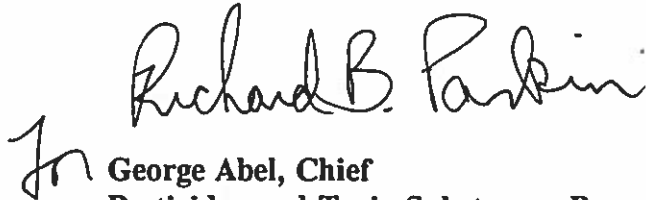
The complaint alleges that Inland Aqua-Tech, violated the disposal, storage, marking, and notification provisions of the PCB (polychlorinated biphenyl) Regulations issued under the Toxic Substances Control Act (TSCA). As explained in the complaint, Inland Aqua-Tech has 20 days to do one of the following:

1. arrange a settlement conference and request and receive a written extension of time;
2. file a written answer and request a hearing with an administrative law judge; or
3. pay the proposed penalty.

The specific procedures for each of the three options are explained in the complaint. Also, as explained in the complaint, if Inland Aqua-Tech, fails to take one of the actions outlined above, a default order could be entered against it. After entry of an order of default, penalties can be assessed against it without further notice.

However, we are available to discuss with Inland Aqua-Tech, the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a written answer unnecessary. Julianne Matthews, Assistant Regional Counsel, is the attorney handling this complaint for EPA. If Inland Aqua-Tech wants to arrange for a settlement conference, request a time extension, or has any questions, she may be contacted at (206) 553-1169.

Sincerely,


George Abel, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: Rebecca Torchia, EPA Headquarters
Leslie Weatherhead, Attorney for Inland Aqua-Tech



Reply to the
Attention of M/S SO-155

DEC 14 1992

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Inc.,
W 621 Mallon
Spokane, Washington 99201**

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Registered Agent for
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E 12121 Portland Avenue
P.O. Box 14784
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**Re: Inland Aqua-Tech Precious Metals, Inc.
Inland Aqua-Tech Company, Inc.
Inland Aqua-Tech Equipment Systems, Inc.
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Docket No. 1092-09-17-2615**

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The complaint alleges that Inland Aqua-Tech, violated the disposal, storage, marking, and notification provisions of the PCB (polychlorinated biphenyl) Regulations issued under the Toxic Substances Control Act (TSCA). As explained in the complaint, Inland Aqua-Tech has 20 days to do one of the following:

1. arrange a settlement conference and request and receive a written extension of time;
2. file a written answer and request a hearing with an administrative law judge; or
3. pay the proposed penalty.

The specific procedures for each of the three options are explained in the complaint. Also, as explained in the complaint, if Inland Aqua-Tech, fails to take one of the actions outlined above, a default order could be entered against it. After entry of an order of default, penalties can be assessed against it without further notice.

However, we are available to discuss with Inland Aqua-Tech, the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a written answer unnecessary. Julianne Matthews, Assistant Regional Counsel, is the attorney handling this complaint for EPA. If Inland Aqua-Tech wants to arrange for a settlement conference, request a time extension, or has any questions, she may be contacted at (206) 553-1169.

Sincerely,


George Abel, Chief
Pesticides and Toxic Substances Branch

Enclosures

cc: Rebecca Torchia, EPA Headquarters
Leslie Weatherhead, Attorney for Inland Aqua-Tech

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10 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

11 **In the Matter of:**

DOCKET NO. 1092-09-17-2615

12 **INLAND AQUA-TECH PRECIOUS**
13 **METALS, INC.;**
14 **INLAND AQUA-TECH COMPANY, INC.; and**
15 **INLAND AQUA-TECH EQUIPMENT**
16 **SYSTEMS, INC.,**

COMPLAINT

Respondents.

17 **I.**

18
19 **JURISDICTION**

20
21
22 **1. This is an administrative action instituted pursuant to Section 16(a) of the**
23 **Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), for the assessment of a civil**
24
25
26

1 penalty. The Complainant is Region 10, United States Environmental Protection Agency
2 (EPA), which has been delegated the authority to institute this action.

3
4
5 **II.**

6
7 **APPLICABLE STATUTES AND REGULATIONS**

8
9 **2. Complainant alleges that the above-named Respondents violated**
10 **Section 15 of TSCA, 15 U.S.C. § 2614, by violating the regulations at 40 C.F.R. Part 761,**
11 **which were promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, and pertain**
12 **to the use and disposal of polychlorinated biphenyls ("PCBs"). The applicable**
13 **regulations and the nature of the violations are described in more detail below.**

14
15
16 **III.**

17
18 **FINDINGS AND VIOLATIONS**

19
20 **3. On March 19 and 20, 1992, an EPA inspection was performed at a facility**
21 **known as the Dayrock Mine property located approximately three miles north of**
22 **Wallace, Idaho, on Nine Mile Road. The property is owned by Respondents. The**
23
24
25
26

1 purpose of the inspection was, in part, to determine compliance with TSCA, 15 U.S.C.
2 § 2601 et seq., and specifically the PCB regulations promulgated at 40 C.F.R. Part 761.
3 Violations of the PCB regulations were documented as a result of the inspection; these
4 violations and applicable regulations and requirements are set forth below.

5
6
7 4. REGULATION - DISPOSAL: 40 C.F.R. § 761.60(d) provides that spills
8 and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater
9 constitute the disposal of PCBs. PCBs resulting from the cleanup and removal of spills,
10 leaks, or other uncontrolled discharges, must be stored and disposed of in accordance
11 with 40 C.F.R. § 761.60(a). Disposal of PCBs in any other manner constitutes the
12 improper disposal of PCBs.

13
14 5. REGULATION: ASSUMPTION REQUIREMENT - PCB-
15 CONTAMINATED ELECTRICAL EQUIPMENT: 40 C.F.R. § 761.3 provides that oil-
16 filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB
17 concentration is unknown must be assumed to be PCB-Contaminated Electrical
18 Equipment.

19
20 6. VIOLATION ONE: An imputed PCB-Contaminated Transformer, a
21 Westinghouse 25 KVA transformer located in the West Substation, was leaking at the
22 time of the inspection. No serial number was apparent to the inspector. The

1 transformer contained 19 gallons of oil and was leaking with fluid visible on most of the
2 transformer. The leaking constituted the improper disposal of PCBs.

3
4 **7. REGULATION - STORAGE:** 40 C.F.R. § 761.65(b) requires that any
5 facility used for the storage of PCBs and PCB Items designated for disposal meet the
6 following criteria:

- 7
- 8 1) Adequate roof and walls to prevent rain water from reaching the stored
9 PCBs and PCB Items;
 - 10 2) An adequate floor which has continuous curbing with a minimum six inch
11 high curb. The floor and curbing must provide a containment volume equal
12 to at least two times the internal volume of the largest PCB Article or PCB
13 Container stored therein or 25 percent of the total internal volume of all
14 PCB Containers stored therein, whichever is greater;
 - 15 3) No drain valves, floor drains, expansion joints, sewer lines, or other
16 openings that would permit liquids to flow from the curbed area;
 - 17 4) Floors and curbing constructed of continuous smooth and impervious
18 materials, such as Portland cement concrete or steel, to prevent or minimize
19 penetration of PCBs; and
 - 20 5) A site that is not located below the 100-year flood water elevation.
- 21
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1 **8. VIOLATION TWO:** The area in the building known as the "compressor
2 **building"** where the following PCB Items were stored for disposal did not meet the
3 **criteria for storage for disposal areas in that there was no secondary containment:**

- 4
5
- 6 **1. GE, 25 KVA transformer, serial number 9580083, 10 C oil, PCB-**
7 **Contaminated transformer (Inland Aqua-Tech analysis completed**
8 **subsequent to the inspection indicated that the transformer contained 84**
9 **parts per million PCB).**
 - 10
11 **2. Transformer designated by EPA inspector as Transformer B (he was unable**
12 **to read the nameplate) - assumed-to-be PCB-contaminated.**
 - 13
14 **3. GE, 25 KVA transformer, serial number 8988114, 10 C oil, no laboratory**
15 **results available, assumed-to-be PCB-Contaminated (information the**
16 **inspector obtained from Hecla Mining Co. indicated that the transformer**
17 **contained 71 ppm PCB).**
 - 18
19 **4. Transformer designated by EPA inspector as Transformer D (he was unable**
20 **to read the nameplate) - assumed-to-be PCB-Contaminated.**
 - 21
22 **5. Transformer designated by EPA inspector as Transformer E (he was unable**
23 **to read the nameplate) - assumed-to-be PCB-Contaminated.**
- 24
25
26

6. Transformer designated by EPA inspector as Transformer F (he was unable to read the nameplate) - assumed-to-be PCB-Contaminated.
7. GE, 7.5 KVA transformer, serial number 7678987, no laboratory results available although the transformer was marked with a yellow PCB-Contaminated label - 10 C oil, assumed-to-be PCB-Contaminated (information the inspector obtained from Hecla Mining Co. indicated that the transformer contained 267 ppm PCB).
8. GE, 25 KVA transformer, serial number 7794396, no laboratory results available although the transformer was marked with a yellow PCB-Contaminated label - 10 C oil, assumed-to-be PCB-Contaminated (information the inspector obtained from Hecla Mining Co. indicated the transformer contained 81 ppm PCB).
9. GE, 25 KVA transformer, serial number 9580081, Inland Aqua-Tech analytical results (subsequent to inspection) document that the transformer is PCB-Contaminated (99 parts per million PCB), 10 C oil.
10. GE, 25 KVA transformer, serial number 9266888, 10 C oil, no laboratory results available - assumed-to-be PCB-Contaminated (information the inspector obtained from Hecla Mining Co. indicated the transformer contained 79 ppm PCB).

1 11. Transformer, serial number 9580080, 25 KVA, 10 C oil, Inland Aqua-Tech
2 analytical results (subsequent to inspection) document that the transformer
3 is PCB-Contaminated (150 parts per million).
4

5
6 9. REGULATION - NOTIFICATION: 40 C.F.R. § 761.205(a)(2) states that all
7 generators (other than generators exempt from notification under
8 40 C.F.R. § 761.205(c)(1)), who first engage in PCB waste handling activity after
9 February 5, 1990, shall notify EPA of their PCB waste activities by filing EPA Form
10 7710-53 with EPA prior to engaging in PCB waste handling activities.
11 40 C.F.R. § 761.205(c)(2) required that generators storing PCB waste subject to the
12 storage requirements of 40 C.F.R. § 761.65(b) or (c)(7) prior to February 5, 1990, notify
13 EPA by filing EPA form 7710-53 with EPA by no later than April 4, 1990.
14

15 10. VIOLATION THREE: Respondents did not notify EPA of their PCB
16 waste handling activity, as required. At the time of the inspection, they were storing
17 PCB waste subject to the storage requirements of 40 C.F.R. § 761.65(b).
18

19
20 11. REGULATION - MARKING: 40 C.F.R. § 761.40(a)(10) requires that,
21 beginning July 1, 1978, each storage area used to store PCBs and PCB Items for
22 disposal be marked in accordance with § 761.45(a).
23
24
25
26

12. VIOLATION FOUR: The area where the PCB Items identified in Violation Two were stored was not marked with the required PCB label.

IV.

PROPOSED CIVIL PENALTY

13. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes a civil penalty of up to \$25,000.00 per day for each violation of TSCA. Based upon the violations cited in this Complaint, the nature, circumstances, extent, and gravity of the violations alleged, Respondents' ability to pay, effect on the Respondents' ability to continue to do business, Respondents' lack of history of prior such violations, the degree of Respondents' culpability, and other such matters as justice requires, the Complainant proposes that Respondents be assessed the following penalty calculated in accordance with the PCB Penalty Policy. A copy of the PCB Penalty Policy accompanies this Complaint.

14. The nature, circumstances, and gravity of Respondents' failure to properly dispose of PCBs, as cited in Violation One, are represented by Level One on the matrix in the Penalty Policy. The nature, circumstances, and gravity of Respondents' failure to properly store PCBs, as cited in Violation Two, are represented by Level Two on the matrix. The nature, circumstances, and gravity of Respondents' failure to notify EPA of

its PCB waste handling activity, as cited in Violation Three, are represented by Level One on the matrix. The nature, circumstances, and gravity of Respondents' failure to properly label its PCB storage for disposal area, as cited in Violation Four, are represented by Level Two on the matrix. The extent of these violations is represented by "minor" on the matrix.

15. The proposed penalty reflects a presumption of Respondents' ability to pay the penalty and to continue in business. Respondents may submit appropriate documentation to rebut that presumption during settlement negotiations. Taking into account all the above factors, the penalty for Respondents, as prescribed by the matrix, is \$16,000, calculated as set forth below.

<u>Regulation</u>	<u>Requirement</u>	<u>Penalty Amount</u>
1. 40 C.F.R. § 761.60	Disposal	\$ 5,000
2. 40 C.F.R. § 761.65(b)	Storage for Disposal	\$ 3,000
3. 40 C.F.R. § 761.205	Notification	\$ 5,000
4. 40 C.F.R. § 761.40	Marking	<u>\$ 3,000</u>
TOTAL		\$16,000

16. Based on the lack of history of prior such violations by Respondents, on the degree of culpability of Respondents, and on other matters as justice requires, no further adjustment of the penalty is indicated at this time. If appropriate, further penalty adjustments may be made during settlement negotiations.

v.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

17. The Consolidated Rules of Practice, 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint. Under those rules, Respondents have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty.

18. To avoid being found in default, which constitutes an admission of all material facts alleged in the Complaint and a waiver of the right to a hearing, and which will effect the assessment of the above civil penalty without further proceedings, Respondents must file with the Regional Hearing Clerk a written Answer within twenty (20) days after receiving this Complaint. Respondents' Answers must clearly and

1 directly admit, deny, or explain each of the factual allegations contained in this
2 Complaint with regard to which Respondents have any knowledge. Where Respondents
3 have no knowledge of a particular fact and so state, the allegation is deemed denied.
4 Failure to deny any material factual allegation constitutes an admission of the
5 allegation. The Answer shall also state: (1) the circumstances or arguments which are
6 alleged to constitute the grounds of defense; (2) the facts which Respondents intend to
7 place at issue; and (3) whether a hearing is requested. A hearing is deemed requested
8 should Respondents contest any material fact upon which the Complaint is based or
9 raise any affirmative defense, or contend that the amount of the penalty proposed in the
10 Complaint is inappropriate, or claim that Respondents are entitled to judgment as a
11 matter of law. The Answer must be sent to:

12
13 Regional Hearing Clerk, Region 10
14 U.S. Environmental Protection Agency
15 1200 Sixth Avenue, SO-155
16 Seattle, Washington 98101

17 19. A copy of the Answer and all other documents which Respondents file in
18 this action must be furnished to Julianne Matthews, Assistant Regional Counsel, the
19 attorney assigned to represent EPA in this matter, at:

20 Office of Regional Counsel, Region 10
21 U.S. Environmental Protection Agency
22 1200 Sixth Avenue, SO-155
23 Seattle, Washington 98101
24
25
26

1 VI.

2
3 **INFORMAL SETTLEMENT CONFERENCE**
4

5 20. Whether or not a hearing is requested, Respondents may contact the
6 above-named attorney to arrange for an informal settlement conference to discuss the
7 facts of this case, the amount of the proposed penalty, or the possibility of settlement.
8 An informal settlement conference does not, however, affect Respondents' obligation to
9 file a timely written Answer to the Complaint.
10

11 21. EPA has the authority to modify the amount of the proposed penalty,
12 where appropriate, to reflect any settlement reached with Respondents in an informal
13 conference. The terms of such an agreement would be embodied in a Consent
14 Agreement and Consent Order. A Consent Agreement and Consent Order entered into
15 by and between EPA and Respondents would be binding as to all terms and conditions
16 specified therein upon signature by the EPA Regional Administrator.
17

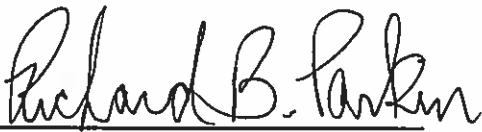
18 22. Respondents are advised that, after the Complaint is issued, the
19 Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the
20 merits of any action with the EPA Regional Administrator, Administrative Law Judge,
21 any member of the Environmental Appeals Board, or any person likely to advise these
22 officials in the decision of this case.
23
24
25
26

VII.

PAYMENT OF PENALTY

23. Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, Respondents may choose to pay the proposed penalty. In order to do this, Respondents must first establish contact with the EPA attorney named in Section V of this Complaint to arrange for the preparation of a Consent Agreement and Consent Order.

ISSUED AT SEATTLE this 11th day of Dec., 1992.


for George Abel, Chief

Pesticides and Toxic Substances Branch

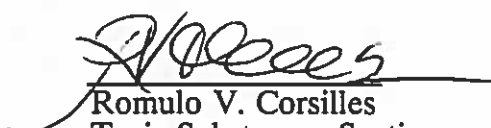
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7 **CERTIFICATE OF SERVICE**
8

9 I hereby certify that, on the date hereunder stated, I have filed, by personal delivery, with
10 the EPA Region 10 Hearing Clerk the original of the foregoing Complaint, Docket Number No.
11 TSCA 1092-09-17-2615, and that, on the same date, I have served, by Certified Mail, Return
12 Receipt Requested, a true and correct copy thereof, with accompanying copies of the
13 Consolidated Rules of Practice, as amended by the Changes to Regulations (40 CFR Part 1 et
14 al.), and the Polychlorinated Biphenyls (PCB) Penalty Policy, on:

15
16
17
18 Mr. Gregory S. Morrison
19 Registered Agent for
20 Inland Aqua-Tech Precious Metals, Inc.
W 621 Mallon
Spokane, WA 99201

Mr. Richard A. Handley
Registered Agent for
Inland Aqua-Tech Company, Inc., and
Inland Aqua-Tech Equipment Systems,
Inc.
E 12121 Portland Avenue
P.O. Box 14784
Spokane, WA 99206

21
22
23
24
25
26 Dec. 14, 1992
27 DATE
28


Romulo V. Corsilles
Toxic Substances Section
PTSB, EPA Region 10



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Bill
FILE COPY

Reply to the
Attention of M/S AT-083

MAR 15 1993

MEMORANDUM

SUBJECT: TSCA Referral for Administrative Civil Penalty: Inland Power and Light Co., Spokane, Washington

FROM: *for* Gil Haselberger, Chief Toxic Substances Section *William M. Hedgaber*

TO: Margaret B. Silver, Associate Regional Counsel

THRU: George Abel, Chief *GA*
Pesticides and Toxic Substances Branch

On January 23, 1992, an EPA inspection was performed by W. Douglas Smith at Ross Electric of Washington, Inc., Chehalis, Washington. The inspection was carried out to assess compliance with the PCB Regulations adopted by EPA pursuant to the Toxic Substances Control Act (TSCA).

During the inspection, a number of documents were obtained, including manifests of PCB waste sent to Ross Electric of Washington, Inc., by various generators. One of the manifests obtained was Uniform Hazardous Waste Manifest Number 09251, identifying Inland Power and Light Co., Spokane, Washington, as the generator. A copy of this manifest is attached. A review of this manifest documented a violation of the PCB Regulations by Inland Power and Light Co. This violation and the associated regulations and requirements are set forth below and in the attached proposed civil complaint.

REGULATION - MANIFESTING

40 C.F.R. § 761.207(g) states that a generator shall designate on the manifest one off-site commercial storage or disposal facility approved under this part for the

commercial storage or disposal of the PCBs and PCB items described on the manifest.

VIOLATION

The generator, Inland Power and Light Co., identified Ross Electric of Wash., Inc., as the designated facility on Uniform Hazardous Waste Manifest Number 09251. The PCB waste identified on Line 11(c) of this manifest was regulated for disposal under 40 C.F.R. § 761.60. Ross Electric of Wash., Inc., does not have approval from EPA for either the commercial storage or disposal of PCB waste. The failure of Inland Power and Light Co., to designate on the manifest a facility which has approval from EPA for either the commercial storage or disposal of PCB waste constitutes a violation of 40 C.F.R. § 761.207(g).

Compliance History

3/11/82 EPA Region 10 TSCA PCB inspection. No action taken.

Request for Action

This assessment is being referred to you for consideration of enforcement action. An Administrative Civil Penalty appears to be in order because of the significance of the violation. Following is a Civil Penalty Assessment for the documented violation of TSCA.

Description of Current Alleged Violation

Violation -	Improper Manifesting
Level -	One
Extent -	Minor (unknown quantity)
Penalty -	\$5,000

The TSCA Case Reviewer assigned to this case is William M. Hedgebeth, 3-7369.

Attachment